THE READING

Of that famous Lawyer

Sr. Robert Brook Kt.

Upon the Statute of

LIMITATIONS,

32. H. 8. Cap. 2.

Grymes
266.

London, Printed for *Hen. Twyford*, and are to be sold at his Shop in Vine-Court, in the Middle-Temple. 1647.

BIBLIOTHECA · BODLEIANA

THE WORDS OF THE STATUTE OF 32. *Hen.* 8. *Cap.* 2. *of Limitations.*

NO perſon ſhall ſue, have, or maintaine any writ of right, or make any preſcription, title or claime to, or for any Mannors, Lands, Tenements, Rents, Annuities, Commons, Penſions, Portions, Corodies, or other Hereditaments of the poſſeſſion of his or their Anceſtors or predeceſſors; and declare and alleadge any further ſeiſin or poſſeſſion of

Droitures aunceſtres. 60. yeares.

his or their anceſtor or predeceſſor, but onely of the ſeiſin or poſſeſſion of his Anceſtor or predeceſſor which hath beene, or now is, or ſhall bee ſeiſed of the ſaid Mannors, Lands, &c. or other Hereditaments within ſixtie yeares next before the *teſte* of the ſame writ, or next before the ſaid preſcription title or claime ſo ſued, commenced, brought, made or had.

2. Droiturel poſſory 50. yeares.

No perſon or perſons ſhall ſue, have or maintaine any Aſſeſſe of Mordunceſtor, Coſinage, Ayel, writ of entrie upon diſſeaſe done to any of his Anceſtors or predeceſſors, or any other action poſſeſſory upon the poſſeſſion of any of his Anceſtors or predeceſſors, for any Mannors, Lands, Tenements or other Hereditaments of any further ſeiſin or poſſeſſion of his or their Anceſtor or predeceſſor,

ceſſor, but onely of the ſeiſin or poſſeſſion of his or their Anceſtor or predeceſſor, which was or hereafter ſhall be ſeiſed of the ſame Mannors, Lands, Tenements or other Hereditaments within 50. yeares next before the teſte of the originall of the ſame writ to bee brought.

3. Actions poſſeſſory, 30. yeares.

No perſon nor perſons ſhall ſue have or maintaine any action for any Mannors, Lands, Tenements, or other Hereditaments of or upon his or their owne ſeiſin above 30. yeares next before the teſte of the originall of the ſame writ to be brought, &c.

4. Avowries, 50. yeares.

Nor ſhall make any avowry or cogniſance for any Rent ſuite or ſervice, and alleadge any ſeiſin of any ſuite or ſervice in the ſame avowry or cogniſance in the poſſeſſion of his or their Anceſtors or predeceſſor or predeceſſors or in

his owne poſſeſſion, or in the poſ-
ſeſſion of any other whoſe eſtate
he ſhall pretend or claime to have
above fiftie yeares next before
the making of the ſaid Avowry or
cogniſance.

5. All *formedous* in reverter, *formedous* in remainder and *Scire facias*, upon fines of any Mannors, Lands, Tenements, or other Hereditaments, ſhall bee ſued and taken within fiftie yeares next after the title and cauſe of action *fallend.* and at no time after the ſaid fiftie yeares paſſed.

6. If any perſon or perſons doe at any time ſue any of the ſaid actions or writs for any Mannors, Lands, Tenements or other Hereditaments, or make any avowry, cogniſance, preſcription, title or claime of, or for any rent, ſuite, ſervice, or other Hereditaments, and cannot prove that he or they, or his,

his, or their Anceſtors or predeceſſors were in actuall poſſeſſion or ſeiſin of, or in the ſame Manors, Lands, Tenements and Hereditaments, and at any time within the yeares before limited in this act and in manner and forme aforeſaid; if the ſame be traverſed or denied by the partie, perſon, or defendant, then after ſuch tryall therein had, all & every ſuch perſon and perſons and their heires ſhall from thenceforth be utterly barred for ever of all and every the ſaid writs, actions, avowries, cogniſance, preſcription, title and claime hereafter to be ſued, had, or made of, and for the ſame Manors, Lands, &c. or other the premiſſes, or any part of the ſame.

Provided alwayes that every perſon and perſons which now have any of the ſaid actions, writs, avowries, *Scire facias*, *Com.* 7.

cogniſance, title, claim or preſcription depending; or that ſhall hereafter bring any of the ſaid actions, or make any of the ſaid avowries, preſcription, title, &c. at any time before the Feaſt of the Aſcention of our Lord, 1546. ſhall alleadge the ſeiſin of his or their anceſtors or predeceſſors, and his owne poſſeſſion and ſeiſin, and have alſo all other like advantage to all intents and purpoſes in the ſame writs, actions, avowries, cogniſances and preſcriptions, titles, and clayme as he or they might have had at any time before the making of this Statute.

8. Provided alſo that if any perſon being within the age of 21. yeares, covert baron, or in priſon, or out of this Realme of England, nor having cauſe to ſue or bring any of the ſaid writs, actions, or to make any avowries, cogniſances, pre-

preſcriptions, titles or claymes, that ſuch perſon or perſons may ſue, commence, or bring any of the ſaid writs or actions, or make any of the ſaid avowries cogniſances, preſcriptions, titles or claime at any time within ſix yeares next after ſuch perſon, nor being within age ſhall accompliſh the age of 21. yeares, or within ſix yeares next after ſuch perſon now being in priſon ſhall bee enlarged, or never being out of the Realme come into the Realme. And that every ſuch perſon in their ſaid actions, writs, avowries, cogniſances, preſcriptions, title or clayme to be made, &c. within the ſaid ſix yeares, ſhall alleadge within the ſaid ſix yeares, the ſeiſin of his or their Anceſtors or predeceſſors, or of his owne poſſeſſion, or of the poſſeſſion of thoſe whoſe eſtate hee ſhall then

clayme. And alſo within the ſame ſix yeares ſhall have all and every ſuch advantages in the ſame as he or they might have had before the making of this act.

9. Provided alſo that if it happen the ſaid perſon now being within age, convert baron in priſon or out of this Realme, having cauſe to ſue or bring any of the ſaid writs, avowries, cogniſances, deſcriptions, &c. to die within age, or during condition, &c. or to deceaſe within ſix yeares next after ſuch perſon, ſhall attaine his full age, or be at large, &c. and no determination or judgement had of ſuch titles, actions, or rights to them ſo accrued, then the next heire to ſuch perſon or perſons ſhall have and enjoy ſuch liberty and advantage to ſue, &c. within ſix yeares next after the death of ſuch perſon or perſons now impriſoned, &c. in ſuch

ſuch manner as the ſame infant after his full age, or the ſaid woman covert after, &c. ſhould or might have had within ſix yeares then next enſuing by vertue of the proviſion laſt before rehearſed.

Provided alſo that if any perſon before Aſcenſion, 1546. ſue or commence any of the ſaid writs, &c. or make any avowry, &c. and the ſame happen by the death of any of the ſayd parties to bee abated before judgement or determination thereof, then the ſame perſon or perſons being demandants or avowants, or making ſuch title, preſcription, &c. being then alive, and if not, then the next heire of ſuch perſon ſo deceaſed may purſue his action, and make his avowry, &c. upon the ſame matter within one yeare next after ſuch action or ſuite abated, and ſhall enjoy all ſuch advantage to make 10.

make their ſaid titles within the ſaid one yeare, as the demandant demandants in ſuch writ, &c. ſhould or might have had or enjoyed in the ſaid former action or ſuite.

Provided furthermore, that if any falſe Verdict happen hereafter to be given or made in any of the ſaid actions, ſuites, avowries, preſcriptions, titles or claymes; that then the partie grieved by reaſon of the ſame ſhall and may have his Attaint upon every ſuch Verdict ſo given or made, and the plaintiffe in the Attaint upon judgement for him given, ſhall have his recovery, execution, and other advantage in like manner as heretofore hath beene uſed, any thing in this Statute contained to the contrary notwithſtanding.

OBSERVATIONS

MADE BY THE READER,

By way of Introduction for the *better understanding of the* true meaning of this Statute.

How the Common Law was before the making of this Statute.

IT to be observed that by the *Statute of Westminster the first, Cap.* 38. *the limitation in a Writ of Right is from the time of* Richard *the first, which is* 340. *yeares past.* Writ of right.

And in a Writ of Assise of Novill disseisin, *& in a* Nuper obiit *by the same Statute of Westminster the first,* post primam transfretationem domini Hen. filii regis Johannis in vasconiam, *which is* 300. *yeares past.* Assesse Nuper obiit.

And

Mardancester, cosinage nativo habendo, writ of Entry.

And in a Writ of Mordanceſtor, Ayle, Coſinage, *and* Nativo habendo, *and in a Writ of Entrie,* Poſt Coronationem domini Henrici filii Regis Johannis, *which is* 325 *yeares paſt.*

Avowries.

And the ſaid Statute of Weſtminſter the ſecond, giveth the like limitation in Avowries, *as in an Aſſiſe of* Novel diſſeiſin, *that is to ſay,* Poſt primam transfretationem domini Henrici filii Regis Johannis in vaſconiam, *which is* 300. *years paſt.*

Aſſiſe.

But now the Writ of Aſſiſe which was wont to be Quod diſſeiſivit eum poſt primam transfretationem domini Henrici filii Regis Johannis in vaſconiam, *ſhall be* Quod diſſeiſivit eum infra 30. annis jam ult. elapſos.

Writ of Entrey.

And whereas the Writ of Entrie was wont to be Quod diſſeiſivit eum poſt primam transfretationem domini Henrici filii Regis Johannis in vaſconiam, *It ſhall be now* Quod diſſeiſivit eum infra 50. annis jam ult. elapſos.

Mardanceſter.

Alſo the Writs of Mordanceſtor, *which were* Si obiit poſt Coronationem domini Henrici filii Regis Johannis, *ſhall now be* Si obiit infra 50. annis iam ult. elapſos.

Alſo

Also the Writ of Nativo habendo, *which was* Quod fugiit de terra sua post Coronationem domini Henrici filii Regis Johannis, *shall be recovered, if it be brought of the seisin of his Ancestor,* Quod fugiit infra 50. annis iam ult. elapsos, *And if it be of his own seisin, then* Si fugiit infra 30. annos iam ult. elapsos. Nativo habendo.

And note that in all Writs of Right, Ayle, Cosinage, Nuper obiit, *and in all Writs of* Possession, *and in all other Writs, in which men shall alleadge explees, or make mention of any seisin, that they shall be of the same forme as they were before the making of this Statute, but when they declare, then they shall make a speciall allegation of the explees within such a time, within the limitation of this Statute, that is to say,* Tempore Regis nunc, *and the like, &c. But if he alleadge the seisin within the time of such a King, of which part may be within the limitation, and part without, there he shall alleadge the yeere certaine, that is to say,* Capiendo inde exples. &c. an. 12. Reg. H. 7. *or the like, for that the Statute is, that he shall alleadge seisin within the time, and not beyond, and therefore he may not alleage generally in the time of such a King,* The forme of writs and declaration since this Statute

King, Where part is Within, and part Without, for the doubt, &c. But Where hee alleadgeth ſeiſin An. octavo *of ſuch a King, and in truth the ſeiſin was* An. 9. *or in the tenth yeare, this is not traverſable, but Where the ſeiſin Was before, Which is out of the limitation, that is materiall and iſſuable.*

And note, that if the ſeiſin may be proved Within the yeares before the limitation, that ſufficeth, becauſe the ſtatute ſaith, that if the ſeiſin ſhall be traverſed, and the demandant cannot prove the ſeiſin Within the yeares before limited, that he upon ſuch tryall ſhall be barred and his heires, &c.

Devi-

Deviſio 1ma.

In what actions theſe limitations ſhall hold place, and in what Courts, and in what not: And where a man may make title beyond threeſcore yeares, and what ſhall be good titles upon this Statute.

AN heire brought an Admeaſurement of dower againſt the wife tenant in dower of this indowment being within age, which indowment was two andthirty yeares paſt, the action is not good.

Becauſe this is to recover land and of his owne poſſeſſion, and lyeth well at full age.

A man brought a writ of *Contra formam feoffamenti* upon a deed bearing date in the time of *Edward* the third, the account well lyeth,

Becauſe it is to diſcharge himſelfe, and to recover nothing.

A man brings a writ of contribution upon a cauſe of action, happening threeſcore

ſcore and one yeares paſt before the Writ purchaſed, the Action lyeth well,

Becauſe hee goeth to have dammages of the charge onely of the ſuite, for part.

A *Ceſſavit* was brought of a Ceſſor 63. yeares paſt before the writ purchaſed, the action lieth well,

Becauſe it is not of the ſeiſin of him nor of his anceſters in this land.

A man brought a writ of error upon an erroneous judgement given againſt his father 62. yeares before the writ purchaſed, the action well lyeth,

Becauſe nothing is prohibited but a writ of right, and an action poſſeſſory of the ſeiſin of him or his preceſſors or anceſtors, and this is not of his owne ſeiſin, and is onely to reverſe the firſt judgement.

The Lord brought a writ *de conſuetudinibus, & ſervitiis*, of a deforcement 61. yeares paſt, the account doth not lie, becauſe he is to recover a ſeigniory.

A Writ of falſe judgement was brought of a judgement given 61. yeares paſt, the account lyeth well,

Be-

Becauſe it is not properly a Writ of Right, nor an action of poſſeſſion; and if it be neither, nor of his owne ſeiſin, then he is not prohibited, becauſe that is properly of no ſeiſin.

A man brings a Writ of Eſcheat of an Action accrued 62. yeeres before this Writ purchaſed, the Action lyeth well,

Becauſe it is not of the ſeiſin of himſelfe, nor of his anceſters in this land, but *ratione dominii.*

A *Monſtraverunt* brought by tenants in ancient demeſne, and declares that the Lord demanded more ſervices in the time of *Ed.*4. 61. yeares paſt, then were demanded in the time of the Kings Progenitors, yet the action well lyeth,

Becauſe it is not to recover any thing, but to diſcharge themſelves of the ſervices.

A writ of *Nativo habendo* was brought, and declared of a ſeiſin 61. years paſt, the action doth not lye,

Becauſe he is to recover the villein, (and a termor ſhall not have his action by *Fitzherb. quare inde*) but

is a writ of Right in its nature, or an action poſſeſſorie at the leaſt.

A writ of *Ne injuſte vexes* brought againſt the Lord to avoid an incroachment gained 61. yeares paſt, the action lyeth,

Becauſe it is onely to diſcharge the land, and to recover nothing; and yet it is a writ of right.

A man brought a writ of Meſne upon a deed of acquitall, made 61. years paſt, the action lyeth,

Becauſe it is onely in diſcharge, and is to recover nothing; and is not properly a writ of right, becauſe battell nor grand aſſiſe doth not lie in it, and he ſhal recover nothing but his acquitall, and he is ſuppoſed in poſſeſſion of his acquitall, and it is not of the poſſeſſion of the plaintife, becauſe it may be that neither he nor his anceſters were never acquited, and that the Lord Paramount never demanded the ſervices untill now, and therefore the action is not reſtrained.

One brought a *Quare Impedit*, and declared of the ſeiſin of his anceſtour 61. yeares

yeeres paſt by preſentation; and that afterward the Church became void, and the Biſhop preſented by lapſe, and now his Clarke is dead, &c. the action well lyeth,

Becauſe the avoidance which is the title, is within the time of limitation, becauſe the lapſe did not ſet him out of poſſeſſion, and he ſhall recover the preſentation.

A man brought a *Quo jure*, and declared of a time 61. yeares paſt, the action lyeth,

Becauſe though it be a writ of Right, yet it is onely in diſcharge, and to recover nothing.

A *Warrantia Charte* is brought by one, *Quia timet implacitari*: and declares upon a warrantie made 61. years paſt, the action well lyeth,

Becauſe he ſhall recover nothing but his warrantie, and if hee loſe afterwards, then he ſhall have in value by a *Scire facias*, which is another action; and alſo he muſt vouche afterwards, &c. and if he be impleaded in an Aſſiſe, he ſhall give notice, &c. ſo that there ſhall

be other circumſtances before that he ſhall recover.

A man brought an Aſſiſe of Nuſance, and declared of a Nuſance levied by the defendant 32. yeeres paſt, the action well lyeth,

Becauſe he ſhall recover nothing, but remove the Nuſance.

A man brings a *Quid juris clamat*, or a *Per quæ ſervitia* againſt the tenant upon a fine levied of a reverſion or ſervices 62. yeeres paſt, the action lyeth,

Becauſe the reverſion and ſervices are in him, and he demands nothing but attornement.

A Formedon in the Diſcender is brought, (of cauſe of action accrued 62. years paſt) and within 60. yeares the action doth not lie,

Becauſe that is an action poſſeſſorie, and not a writ of right, *ut videtur. Vide Dyer* 278. & 291. that a Formedon in Reverter and Remainder is not within the ſtatute, becauſe the gift is the title.

A writ of Waſte is brought of waſte made 60. yeeres paſt, the action lyeth,

Becauſe no land is expreſly demanded,

ded, and he declares of no ſeiſin.

A man brought a plaint in a baſe Court of cuſtomarie land, and made proteſtation in the nature of a writ of Right at the Common Law, and declares of a ſeiſin 61. yeeres paſt, the action doth not lie,

Becauſe this is ruled by the equity of this Statute, and ſo it was by the ancient limitation: and alſo the declaration is in the nature of ſuch a writ at the Common Law, and every writ at the Common Law is ordered by this Statute. Yet *quære* whether this Statute extend to Copieholders as to the avowrie for ſervices, for it ſeemeth that it doth not but onely to free-holders, becauſe they ſhall not alledge ſeiſin in his or their auncеſters, according to the words of the Statute, but onely in the Lord.

A man brings a plaint in a priviledged Court, or in Wales, or in the Cinque-ports, where they have authority to hold pleas *per querelam*, and declares upon the ancient limitation, it lyeth well,

Becauſe the Statute ſpeaks of the *teſte*

of the Writ, ſo that it muſt be by Writ, which this is not.

A man brought a writ of right cloſe in ancient demeane, he cannot declare of the ancient limitation,

Becauſe the Statute ſpeaks from the *teſte* of the Writ.

In a writ of right of Warde, the plaintife declared of ſeiſin of ſervice and ſeigniory, &c. 61. yeeres paſt, and that his tenant died, his heire within age, and that the defendant deforced him, this is a good declaration, notwithſtanding the Statute,

Becauſe he was poſſeſſed of his ſeigniory until the deforcement, which is within 61. yeeres, and he ſhall recover but a chattell onely.

A man recovers certaine land by a *Præcipe quod reddat*, or by another action, the tenant dieth, his heire enters, the 61. yeares paſſe, the demandant or his heire may have a *Scire facias* to execute the judgement,

Becauſe this is not an action poſſeſſorie, nor in the droit, but a writ of execution, and therefore out of the Statute.

A

A woman brought a writ of right of dower of the ſeiſin of her husband, 61. years paſt, the action lyeth,

Becauſe that is not of her owne ſeiſin, nor of none of her anceſtors nor predeceſſors, neither is it an action poſſeſſorie, and it is not prohibited by the ſtatute.

A writ of Right of Diſclaimer is brought, and declareth of a Diſclaimer 61. yeeres paſt, this is a good declaration,

Becauſe it is not of the ſeiſin of his Anceſtour, nor predeceſſour, but *ratione dominii*, becauſe this ſeiſin ſhall be referred to the land, and not to the ſeigniory, as appeareth by expreſſe words of the Statute in the end of the third Article, becauſe the Statute ſpeaks where he or his anceſters or predeceſſors were ſeiſed of the ſame land or tenements, or hereditaments, within 60. yeeres. And alſo the Writ doth not demand land, and yet it may recover land.

Tenant by the courteſie of England of a Mannour with eſtovers appendant, is diſturbed, and after is outlawed of felony,

lony, the King enters by office, the tenant by curteſie dyeth 61. yeares after the utlawry, the heire ſhall not have a *Quod permittat*,

Becauſe it is a writ of right, and to recover the common of eſtovers, and the time is paſt, and in this action he ſhall alledge ſeiſin.

A man ſeiſed of an advowſon preſents, and his Clarke is inſtituted and inducted, and dyeth 61. yeeres after this ſtatute, the patron preſents and is diſturbed, and he brings a writ of right of advowſon, he may declare of a ſeiſin 61. yeeres paſt notwithſtanding this ſtatute,

Becauſe he ſhall recover poſſeſſion of the advowſon, and the poſſeſſion of the preſentation afterwards is a ſeiſin for the patron in the patronage, and alſo in this caſe he was ſeiſed within 60. yeares, becauſe he was ſeiſed untill the uſurper diſturbed him, and that was within 60. yeares.

A Formedon of ten acres of land which paſſed againſt the tenant, and judgement given thirty two yeeres paſt,

paſt, the Tenant ſhall have an attaint,

Becauſe that albeit it ſhall be of his owne ſeiſin, and to recover land, and the 11. article of the Statute cannot be ſo taken to ſet the lands at liberty, &c. yet that is not properly of the ſeiſin of himſelfe nor of his anceſtors, becauſe that is taken, where it is taken upon the ſeiſin, as in an aſſiſe and other actions, where they ſhal alledge ſeiſin and explees, as appeareth by the firſt branch of the ſtatute, which hath theſe words, *viz.* [*And alledge and declare any farther ſeiſin, &c.*] becauſe the action is brought upon the falſe verdict, and not upon the ſeiſin, &c.

An Aſſiſe of Freſh force is brought in a City by Bill without writ of a diſſeiſin made to the plaintife himſelfe twenty two yeares paſt, the action doth not lye, notwithſtanding that it bee within the limitation of an Aſſiſe,

Becauſe that freſh force ought to be brought and recovered within 40. dayes after diſſeiſin, &c. and therefore

fore notwithstanding that it be not by Writ, yet that will not serve by the Common Law.

In an annuity the plaintiffe declared of a grant made to him and his heires, by the defendant for him and his heires, 61. yeeres past, the action lyeth,

Because no tenant is charged, and he doth not declare of any seisin, but onely upon the grant.

In an Assise the tenant makes a barre at large, the plaintife said that *I.H.* was seised in fee, and holds of him, and dyeth seised without heire 34. yeeres past, by which he enters presently by Eschete, and was seised, and disseised by the defendant 28. yeeres past, &c. this is a good title, besides this limitation, notwithstanding this statute,

Because it is not brought of the seisin of his ancestour or predecessour in this land, and his owne seisin was within 30. yeeres, and therefore when that seisin serves to bring an action upon his own possession, he may make title before the limitation, if it be not made of the seisin of his ancester or predecessor.

Assise

Aſſiſe the tenant made a bar at large, the plaintife ſaid that his villein purchaſed the land of *I. S.* by which the plaintife entred 35. yeers paſt, and was ſeiſed and diſſeiſed by the plaintife 20. yeeres paſt, &c. this is a good title, *ratione qua ſupra.*

In a writ of entry, in nature of an Aſſiſe, the tenant made a barre by the feoffment of *I. H.* and gives a colour, the plaintife ſaid that his father was ſeiſed, and died ſeiſed 12. yeeres paſt, and he entred as heire, and was ſeiſed and diſſeiſed 11. yeeres paſt, &c. this is no good title upon this ſtatute,

Becauſe in this action he ſhall not make title at large as in an Aſſiſe. Note the difference.

In a writ of Right of Advowſon the plaintife made title that he himſelfe 20. yeeres paſt recovered the Advowſon in a writ of Right of Advowſon againſt *I. N.* the Church full, and now the Incumbent dead, and the plaintife preſented, and the def. diſturbed him, this is no good title upon this ſtat.

Becauſe in this action he ſhall alledge ſeiſin as in *groſſis decimis*, ſmall tithes,

tythes, &c. which he cannot doe, without alledging ſeiſin; ſo that a recovery onely without ſeiſin in him or his anceſters is not good.

An Aſſiſe the tenant pleads a recovery againſt the father of the plaintife, whoſe heire he is, &c. by which he enters, the plaintife ſaith, that after ſeiſin the father of the plaintife enters, and dyeth ſeiſed 12. yeeres paſt, and he enters as heire, and was ſeiſed and diſſeiſed, &c. this is a good title, notwithſtanding the recovery,

Becauſe that notwithſtanding the recovery binds the bloud, yet the ſeiſin and diſſeiſin is a new title.

In an Aſſiſe the tenant makes a barre at-large, the plaintife ſaid that the tenant himſelfe 62 yeeres paſt was ſeiſed in fee, and infeoffed a ſtranger, upon condition that he ſhall enfeoffe ſuch a perſon as he ſhall name before Eaſter, and firſt hee names an eſtranger before Eaſter, and afterwards and before Eaſter hee names the plaintife, and thereupon the feoffee enfeoffs the plaintife who was ſeiſed and diſſeiſed fourteen yeeres paſt, this is a good title, notwith-

withſtanding that it be without the limitation,

Becauſe by 14 *Ed.* 4. the feoffee may enfeoffe either the one or the other, and it is not of the ſeiſin of his anceſtour nor predeceſſour.

An Aſſiſe the tenant makes a barre by a bargaine and ſale of *I. S.* by Indenture inrolled within the 6. moneths, and the plaintife made title by another bargaine and ſale from the ſame *I.S.* by Indenture inrolled within,&c. made unto him after the firſt deed indented, becauſe that *I.S.* at the time of the firſt bargaine and inrolment was an infant, and entred at one and twenty yeeres, and ſold by the laſt deed enrolled to the plaintife, by which he was ſeiſed and diſſeiſed, &c. this is no good title,&c.

Becauſe an infant ſhall not avoid a deed enrolled by nonage, nor hee which claimes by him.

In an Aſſiſe the tenant made a barre by a leaſe made by *I.S.* to *W.N.* for term of life, the leſſee grants the reverſion to the defendant, and *W.H.* the tenant attorns, and after aliens to the plaintife, by which he enters; the plaintife ſayes that the

the said *I.S.* the lessor leased to the said *W.H.* for terme of life, upon condition that if he grant the reversion to any during the life of the said *W. N.* that then *W.N.* shall have fee, and said that the lessor granted the said reversion 61. years past by that deed to the tenant, and after he attorned as aforesaid, and after *W. N.* enfeoffed the plaintife, and was seised and disseised 12. yeeres past, &c. this is a good title,

Because it is not of the seisin of his ancestours nor predecessours, but of his owne seisin, and the grant of the reversion in fee was in the lessee, because there was the same instrument, the grant and attornement: and therefore the attornment void, contrary if the grant had been by fine, as in a *Quid juris clamat*, 6 R. 2. that then the condition would come too late.

In an Assise the tenant was barred by a feoffment of the plaintife himself with warrantie 61. yeeres past, and relyes upon the warrantie; the plaintife shewes that the same feoffment was by deed indented, and that upon a condition that

if

if the defendant doe not pay 100. pound within one yeere to the plaintife, that he ſhall reenter, the defendant doth not pay, by which he entred, and was ſeiſed, and diſſeiſed 12. yeeres paſt, &c. this is a good title, notwithſtanding this ſtat.

Becauſe where a man binds the defendant, he may make title of his owne poſſeſſion, as recovery of a villein, and the like; and it is no part of the ſeiſin of his anceſtour nor predeceſſour, and therefore out of the caſe of the ſtatute, as to the 61. yeeres paſt.

Aſſiſe the tenant makes a bar at large, the plaintife makes title, for that the ſame defendant in the life of his father ſold the land, &c. to the plaintife by Indenture, and delivers to him the Deed, and afterwards the father dyeth within the 6. moneths, and the defendant enrols the Deed within the 6. moneths, by which the plaintife enters, and was ſeiſed and diſſeiſed, &c. this is no good title upon this ſtatute,

Becauſe a man may confeſſe and avoid a Deed enrolled, as to ſay that he had nothing at that time, &c. but not

not by Infancie, Ideocie, *Non sanæ memoriæ*, or the like; and the Deed takes its perfection by the livery, and not by the inrolment; for if one make a grant when he hath nothing, & the land, and he hath before attornement, this doth not make the grant good, and the Indenture is not an estoppell, because where a man releaseth to *I. N.* being in full seisin, yet he may say that he had nothing at the time of the grant, &c. And the same law is it of a lease by Indenture in the time of his father, and by 12 *H.* 4. *f.* 12. a man may confesse and avoid a deed inrolled.

In an Assise the tenant makes a barre at large, the plaintife makes title because that *I. N.* was seised in fee, and leaseth to *W. X.* and *T. S.* for terme of life, and after grants his reversion which he had depending upon the estate of *T. S.* to the plaintife, the tenants attorne and dye, and the plaintife enters, and was seised and disseised, and all is within 20 yeeres, this is not a good title upon this statute,

Because

Becauſe the Grantor ſhall not have ſuch a reverſion.

Mayor and Comminalty by their name of Corporation, and not by their proper name, may make title after this Statute by 80. yeares paſt,

Becauſe that is of their own poſſeſſion, and not of the ſeiſin of their anceſtour nor predeceſſour: And the ſame law of Deane and Chapter, but contrary of Biſhop and Parſon upon a ſeiſin of his Predeceſſour, becauſe that is expreſly within the words of the Statute. *Nota.*

DIVISIO 2da.

OR,

The second dayes Reading, or Lecture.

Where a man shall prescribe according to the ancient forme, and where not; and what prescriptions shall be good upon this limitation, and what not.

A Man may prescribe that he and his ancestors or predecessors, or those whose estate, &c. were seised from the time that contrary whereof, &c. as before the Statute: yet he shall not alledge or declare in the record of a seisin within 60 yeeres before the confession of the prescription

ſcription, yet it ſeemeth that he ſhall take advantage in evidence of the preſcription of an ancient ſeiſin before 60. yeeres, with a ſeiſin alledged within 60. yeeres, without elder commencement: And therefore the preſcription as it ſeemeth ought to be elder, but he cannot alledge nor declare in the record but within 60. yeeres, but may enforce it in evidence at large, *quod nota*. And by the generall ancient forme of preſcription, it ſhall be intended & meant as a preſcription, of which part of the ſeiſin is within 60. yeares, according to this Statute.

In a *Quod permittat* the plaintife preſcribes in him, and thoſe whoſe eſtate he hath in the Manour of D. for common appointment from the time of King *Rich.* the firſt, he may doe it well, notwithſtanding this ſtatute,

Becauſe the Statute doth not extend to a preſcription by whoſe eſtate, &c. but to a preſcription in him, his anceſtors and predeceſſors.

A *Quo Warranto* the plaintife preſcribes in him and his anceſtors for toll traverſe from the time, &c. to have a peny for every load of ſtuffe carryed over

my land to his Mannour, &c. this is a good preſcription,

Becauſe this is to goe overthwart my land, but through toll is to goe over the way through my land, and therefore contrary there : and the preſcription ſhall ſerve as a new title, by the uſage afterwards.

Aſſiſe of common the plaintife made title to common appendant in the Mannour of the defendant, the defendant preſcribes that he, &c. and all his anceſtors whoſe heire he is, &c. have uſed from the time of *Rich.* the firſt to put forth of their Commons ſuch cattle which were not levant and couchant upon the ſame lands to which, &c. and for that that thoſe cattle were not levant, &c. he put them forth, &c. this is a good preſcription,

Becauſe it is not to recover any thing, but to diſcharge onely.

In a *Quo Warranto*, &c. the plaintife preſcribes in him and his anceſtors Lords of the Manour of D. from the time, &c. to take a peny for every load of through toll of thoſe which carry through his Mannour, this is a good preſcription,

For

For the reaſons before alledged, and becauſe it is contrary to common right.

In a *Quo warranto* the party preſcribed in him and his anceſtors Lords of the Mannor of D. to have cogn'ſance of pleas, and to hold plea in the Court of the Mannour aforeſaid, from the time of, &c. this is a good preſcription,

Becauſe he cannot preſcribe in the grant of pleas.

Aſſiſe of land, the def. diſclaimes in the ſurvey, and preſcribes that he and his anceſtors ſeiſed of the Mannor of *D.* have uſed from the time of *R.* 1. &c. that when ſuch a gutter which conduceth water to ſuch a houſe was ruinous, to enter into this land, and to repaire it, and that he therefore entred to repaire, this is a good preſcription, notwithſtanding this Statute,

Becauſe he is not to recover anything, but to have eaſement, becauſe the Statute doth not ſpeake but only of preſcription to lands, tenements, commons, rents, portions, penſions, and hereditaments.

A *quod permittat* of common the

plantife made title by preſcription, from the time of *R.* 1. &c. the defendant ſaid that he, &c. have been within age ſucceſſively *de tempore*, &c, judgement, &c. this ſhall not avoid the preſcription,

Becauſe this is a Law, as a condition or recovery.

A man hath had a Faire, and one Market by preſcription, from the time of *R.* 1. &c. which is ſeiſed into the Kings hands 60. yeeres paſt by non-claime in a *Quo Warranto* before this Statute, &c. he ſhall never have the liberties again by preſcription nor otherwiſe,

Becauſe he might replevie them within 50. yeeres.

A man which had a Leet, and Warren, and Wreck by the Kings grant, made no claime to the ſame before the Juſtices in Eyre 62. yeeres paſt, by which his liberties are ſeiſed into the Kings hands, and yet he and his heires continually uſed the ſame afterwards, and in a *Quo Warranto* his heire made title to that by preſcription; according to this limitation, he ſhall not have his liberties by this preſcription.

A

A man hath had *catalla felonum & fugitivorum* from the time of *R.* 1. &c. and hath had allowance in Eyre, and afterwards makes his claime in Eyre by preſcription, &c. he ſhall not have thoſe liberties, &c.

Becauſe a man cannot preſcribe in thoſe things which touch the Crowne.

A man hath had a Faire and Market by preſcription certaine dayes, and afterwards the King grants the ſame liberty to him by his Letters Patents 40. yeeres, before the Aſcenſion, 1546. and in a *Quo Warranto* a month after the Aſcenſion, &c. he makes his claime to that by preſcription, by an uſage before, &c. this is not a good preſcription upon the matter,

Becauſe the grant determines the preſcription, as an obligation determines a grant or contract.

A man preſcribes that he, &c. ancient tenants of D. and all lands of D. from the time of *R.* 1. &c. have been quit of toll, this is a good preſcription notwithſtanding this ſtatute,

Becauſe that it goeth in diſcharge,

and to recover nothing.

In a *Serta molendini* the plaintife after Aſcenſion, &c. made his declaration, that he and all thoſe whoſe eſtate he hath in the Mannour of D. have had ſuit of their tenants to their Mill within his Mannour, from the time of *R.* 1. this is a good preſcription,

Becauſe he preſcribes (*per que eſtate*) which is not reſtrained by the Statute.

Aſſiſe of Common the plaintife preſcribes that he hath been ſeiſed of Common for all cattell in the place where, &c. by all the time of this limitation, this is not a good preſcription,

Becauſe the Statute ſayes that he ſhal not make preſcription but of the ſeiſin of his aunceſtors or predeceſſors within 60. yeares before the making, &c. and his anceſtour was not ſeiſed within the 60. yeares, but himſelfe, &c. ſuch a preſcription is not warrantable either by this Statute or by the Common Law.

In a Replevin the defendant preſcribes in him and his aunceſters to have amerciaments of all his tenants of D. from the

the time,&c. *in quibuſcunque curiis*, and may diſtrain & make avowry for them, this is a good preſcription upon this Statute, notwithſtanding that it be of an amerciament *in Curia Regis*.

In a *Quo Warranto* the plaintife makes his title by preſcription in him and his auncеſtours, that they have uſed to have waifes from the time of,&c.and to retaine them, notwithſtanding freſh ſuit from the time,&c. this is no good preſcription,

Becauſe it is contrary to common right,and cannot have any lawfull beginning.

A man makes a preſcription in treſpaſſe,&c.that he and his auncеſters from the time, &c. to have the eſcapes of cattell in another mans land, in driving to ſuch a Park without amends made from the time of *Rich.* 1. this is a good preſcription, notwithſtanding this Statute,

Becauſe it is not to recover any inheritance, but onely by way of diſcharge.

An Aſſiſe of Nuſance for ſtopping of water, by reaſon whereof 20. acres of land

land are surrounded, the defendant prescribes that he and his Aunceſters Lords of the Mill of Dale, have uſed from the time of *R.*1.&c. to ſtop, during the re-edifying and repaire of their Mill; this is agood preſcription,

Becauſe it goeth by way of eaſement, and to recover nothing.

A man preſcribed that hee, &c. Lords of the Mannour of D. have had way over the land of another partie from the time of *R.*1.&c. to the Church of D. this is a good preſcription,

Becauſe it is neither tenement nor hereditament, but eaſement, becauſe an Aſſiſe doth not lye of a way, nor if a man give *omnia tenementa & hereditamenta ſua*, the way doth not paſſe.

In an Aſſiſe a man preſcribes in common,&c. in him and his aunceſtors *de tempore*, &c. upon which they are at iſſue, and it is found that he and his anceſtours have beene ſeiſed by 10. years, and have been diſturbed by another 10. years *alternis vicibus de tempore, &c.* he ſhall not recover upon this verdict and preſcription,

Be-

Becauſe the interruption is equall with the ſeiſin.

In an Aſſiſe the tenant preſcribed in him and his aunceſtours tenants of ſuch land in D. to enter into the land of the plaintife, and to abate the Nuſance as often as the plaintife or his aunceſtours eſtop ſuch a river *de tempore*, &c. this is not a good preſcription,

Becauſe where the Common Law will ſerve him, he ſhall not preſcribe. 9 *Ed.* 4.

Quo Warranto the Bailiffes and Comminalty of S. claim to make Fraternities of themſelves by Maſter and Brethren by uſage *de tempore*, &c. and the ſame being ſo made ſhall ſo implead and be impleaded, &c. this is no good preſcription upon this Statute, 9 *E.* 4. 3.

An Aſſiſe by Maſter and Confreres of D. the defendant ſaid that there were no Maſter and Confreres there, & the plaintife ſaid that he and his predeceſſours have been Maſters and Confreres there, and capable by that name, and have uſed to implead and be impleaded by that name, from the time of *R.* 1. and continually afterwards, this is a good preſcription

ſcription after this Statute, &c.

Becauſe he cannot preſcribe in a Corporation; and this preſcription is to enable him, and is not made to the land, and therefore out of the caſe of the Statute.

Lord of a Mannour and tenant by homage, fealty, and 10. ſhill. rent, the Lord releaſes the ſervices of the tenant, ſaving the rents, and afterward is ſeiſed of the rent, and diſſeiſed, and brings an Aſſiſe, and makes title that he and his auncеſters, &c. *de tempore*, &c. have been ſeiſed of the rent, this is a good preſcription upon the Statute 31 *E.* 3. *p.* 33.

Becauſe in a rent ſervice a man ſhall not preſcribe, becauſe he may make another title by the Common Law, contrary for a rent ſeck.

In a Replevin the defendant avowed becauſe that it had been uſed by him and his anceſtours whoſe heire, &c. Lord of the Mannour of D. for to diſtreine for Heriot cuſtome upon the death of every tenant of the Manour *de tempore*, *&c.* and for Heriot cuſtome after the death of *I.W.* &c. he avoweth &c. this is not a good preſcription upon this Statute,

Becauſe

Becauſe for Heriot cuſtome the property is in him, and he may ſeiſe it, and may have an action, and a man may not preſcribe in his owne goods.

Dower by a woman, the defendant ſaid that the husband was attainted of felony,&c. the plaintife ſaid that it had been uſed in this Manour from the time of *R.*1. that the wives of a man attainted ſhall have dower,this is a good preſcription upon this Statute 8 *H.* 3. the like in Gavelkind, of which the heire ſhall inherit. And this preſcription is not made of the ſeiſin of him nor of his anceſtours, and therefore out of the caſe of the Statute.

A replevin for an amerciament, in a leete for not comming to be ſworne to the King, the defendant preſcribes that the uſage is there to be ſworne before the Conſtable and Portreeve, and not in the Leet, this is no good preſcription by the opinion of the Court, 2 *H.* 4.

Abbe and his predeceſſours have been ſeiſed of a rent by preſcription out of the mannonr of *D. de tempore*, &c. the Abbey is changed into a Deane and Chapter,

ter, where they ſhall not preſcribe in them and their predeceſſours *de tempore*, &c. upon this Statute,

Becauſe they ought to preſcribe part in the Abbe, and his predeceſſours, and then ſhew the alteration, and preſcribe by the name of Dean and Chapter, &c. 7 *Ed.* 4.

Replevin the def. preſcribes to have 10. pound for every daughter of every villain which is married in his mannour of *D. de tempore*, &c. and for to diſtraine the goods of the father for the ſame, &c. and for marriage of ſuch a daughter of *I.N.* his villein, he avoweth this is no good preſcription upon this Statute,

Becauſe he may take all their goods at the Common Law.

In an Aſſiſe the tenant ſaid that hee leaſed to *W.H.* for life who aliened to the plantife in fee for which he entered, the plantife ſaid that it had beene uſed *de tempore*, &c. which in the Village of Dale *ubi*, &c. that whatſoever eſtate a man made, that nothing ſhould paſſe but onely his own eſtate, and the reſt to be void, this is a good preſcription upon this Statute,

Becauſe

Becauſe a thing which may be intended to have a lawfull beginning, as by grant or reaſonable uſage it is good; as to have for every poll 4. pence of the cattell diſtrained, or to kill the diſtreſſe which he takes dammage feſant, or to have of every one which breakes his pound, this is no good preſcription againſt a ſtranger, but againſt his owne tenants it is, becauſe it may begin by aſſent.

In a replevin the defendant ſaid that the tenant held 4. acres of him by fealty, and two ſhillings rent, for which rent, &c. his aunceſtors have uſed *de tempore*, &c. to diſtraine, this is no good preſcription upon this Statute,

Becauſe where the Common Law will ſerve, he ſhall not preſcribe.

A man preſcribes in an Avowry that he, &c. have been ſeiſed of Cõmon without number in the place, &c. by 40. years before the making of the preſcription, this is no good preſcription,

Becauſe the Statute doth not warrant it, albeit it ſpeak of ſeiſin within 60. yeeres.

The

The third Division, or Lecture.

Where he that hath cause of action, entry, title, or right, and suffers this limitation to passe, may have remedy afterwards, and what remedy, and where not; As also where the laches of one shall prejudice another, and where not; and where a may may make a claime after 60. yeares, and where not.

A Man sels his land by Indenture after the Statute, and before the inrolment the vendor is atainted of felony committed after the bargain and before the inrolment, and after the deed

deed is enrolled, within ſix moneths the Lord enters for Eſcheate, the vendee doth Ouſter him, and declares of a ſeiſin by 60. yeares, the Lord may re-enter, and retaine, notwithſtanding the Statute,

Becauſe that the Land is not veſted in the Vendee, untill enrollment, and a matter of Record ſhall not have relation beyond the teſte, and meaſne acts veſted ſhall not be deveſted: And it ſeemeth that this Statute of Limitations doth not take away the right nor entry of none of his owne proper ſeiſin, but only his action, preſcription, title, and claime of the ſeiſin of his auncеſtors and predeceſſors; and if the vendor die before inrollment, the Lord ſhall have the Ward.

A man ſeiſed of a Mannor, and villain regardant in the right of his wife, the villain purchaſeth Lands, the husband enters, and dyeth, his heire enters, the wife may enter 61. yeares afterwards, and retaine notwithſtanding the Statute,

Becauſe the husband ſhall not have the Land purchaſed in right of the

wife, and the wife was seised with him, contrary, of a termor, or tenant for life, which are seised, *jure proprio*.

A man made a feoffement upon condition, on the part of the feoffee, the condition is broken, the feoffee dyeth seised, his heire enters, the 60. yeares passe, the feoffor may enter and retaine, notwithstanding this Statute,

Because the Land is bound with a condition, and if it be by deed, it may be pleaded by *Littleton*, *tamen cave*, that he bring no action after his entrie, because it seemeth that if he be driven to make title, that then he is gone: And the like seemeth, if he be driven to plead that by way of bar, but upon a generall issue he may give it in evidence.

A feme disseiseres taketh a husband, the disseisee releaseth to the husband and his heires all his right, the husband dyeth, the heire of the husband entereth the 60. yeares passe, the wife may enter, and retaine,

Because this release shall enure to the wife, for albeit that the wife was i

by wrong, the husband was in by title, and therefore that enures according to the eſtate, and perfects the eſtate of the wife; as a releaſe to three feoffees of a diſſeiſor, where there are foure feoffees, that enures to the reſt, but contrary, of a rel. to one of the diſſeiſors.

An infant ſeiſed of land, takes a wife which hath iſſue, a ſonne, the husband being then of the age of 8. yeares, and after had another ſon, the husband being of the age of 18. yeares, the husband dyeth, the youngeſt ſon enters, and the eldeſt ſon enters upon him, and continueth poſſeſſion by 60. yeares, yet the yongeſt may enter and retaine,

Becauſe the eldeſt is baſtard, by reaſon of the age of the father, 29. *E.* 3. 54. & 38. and that ſuch baſtardy ſhall be tryed by Aſſiſe by ſpeciall pleading.

A man ſeiſed of Lands, hath 2. daughters and dyeth, *I. S.* abateth, and the eldeſt ſon makes claime a furlong disjunct from the land, becauſe he dareth not enter, and after dies without iſſue 60. yeares after, there the other ſiſter

may enter and retaine,

Becauſe the claime of one, is an entry for the other, and one aſſiſe ſhall ſerve for the entrer, 38. *E.* 3. 23. but ſuch claime ſhall be within the view of the Land, for otherwiſe it ſhall not ſtand for an entry upon tryall, &c. becauſe the iſſue was taken, 4. *H.* 4. And the Stat. ſaith, that a man ſhall not declare nor alleage any farther ſeiſin of his Anceſtor or Predeceſſor then within 60. yeares, &c.

A man makes a feoffement in fee to *I. N.* upon condition that he ſhall deliver xx. yards, or &c. of Wooll at Roan in France, the feoffee doth not deliver it, the feoffee enters and declares by 60. yeares, the feoffee may claime, or enter, and retaine,

Becauſe the condition is voide to bee performed beyond Sea, which cannot be tryed here, 10. *H.* 6. and therefore the entry of the feoffor was a diſſeiſin. *vide* 7. *H.* 6. 14.

Cont. Cok. li. 6. fo. 47. &c. in Dowdals Caſe with a difference.

A feme diſſeiſeres takes a husband, the husband makes a leaſe for life, and the diſſeiſee releaſes all his right to the tenant

nant for life, the tenant for life dyeth, the husband dyeth having iſſue, &c. the heire enters, the wife enters upon him, and continueth poſſeſſion by 60. yeares, the heire of the husband may claime the Land, or enter and retaine,

Becauſe by the diſcontinuance the reverſion was to the husband alone, and therefore the releaſe to tenant for life, enureth to the eſtate of the Land, and of him in the reverſion, *Tit. Releaſe, Litt.* 119.

A man hath iſſue baſtard reigne, and *mulier puiſne*, and dyeth, the baſtard entreth, and indoweth the wife of the father and dyeth, and the tenant in dowre dyeth, the iſſue of the baſtard enters, and continueth poſſeſſion by 60. yeares, the *mulier* cannot claime, nor enter, nor retaine,

Becauſe that although the baſtard doth not die ſeiſed, as of a reverſion, yet the *mulier* cannot enter as heire of his auncestor after 60. years, becauſe that is a claime in Law.

A man ſeiſed hath iſſue, two daugh-

ters, the one a baſtard reigne, and the other a *mulier puiſne*, and dyeth, the daughters enter, and are impleaded, and vouch an eſtranger, who enters into the warranty, and leeſeth, the demandant recovers, and they over in value, the *mulier* ouſts the baſtard, and continueth poſſeſſion 60. yeares, the baſtard may enter, and retaine,

Becauſe the Vouchee is a concluſion.

A villaine takes a wife, and purchaſeth Land to him and his wife in fee, the Lord enters, the baſtard dyeth, the Lord continueth ſeiſin, 60. yeares paſſe after the death of the husband, the wife may enter, and retaine the Land,

Becauſe there are no moities betweene husband and wife, of a purchaſe, during covertures.

id. Coke li. 4. l. 71. A feme ſeiſed in fee, ſels the Land after the Statute, by Deed indented, and after is raviſhed, and conſents to the raviſhor, his ſon enters, and after the Deed is inrolled within ſixe moneths, the vendee enters and is ſeiſed by 60. yeares, the ſon may make claime, or enter, or retaine,

Becauſe

Becauſe it was perfectly veſted, as where a daughter takes a *perquiſite*, or remainder, and after a ſonne is borne.

A man marrieth with his Neiſe, and Land is given them in fee, the husband dyeth without iſſue, the heire enters, the wife ouſts him by a continuant by 60. yeares, the heire may enter and retaine,

Becauſe the marriage is not an enfranchiſement, and then by the death of the husband this is a purchaſe by the villaine, becauſe by *Natura Brevium* ſhee ſhall not have Dowre.

A man ſeiſed in right of his wife, aliens in fee upon a condition, the husband dyeth, the condition is broken, the heire of the husband enters, and continueth 60. yeares, the wife may enter, and retaine,

Becauſe the entry of the heire purgeth the diſcontinuance, 4. *H.* 6.

A man hath iſſue, two daughters, the one a baſtard, and the other a *mulier*, and holds of the King, and dyeth ſeiſed, the daughters enter, and ſue livery, and

after the *mulier* ouſts the baſtard, and continueth by 60. yeares, the baſtard may enter, and retaine the avowry, and if ſhe be ouſted, ſhe may have a Writ of Right,

Becauſe the Livery is an Eſtoppell, and a diſcent between privities ſhall not take away an entry, and the baſtard is privy by Eſtoppell.

A man is diſſeiſed of a meſſuage, and dyeth, the heire ſuffers 60. yeares to paſſe, and after commeth to the doore to ſet his foot to enter, the diſſeiſor ſtands in the doore with a Sword, by which the other dares not enter, and afterwards in the ſame manner the diſſeiſor dyeth ſeiſed, and his heire enters, this claime ſhall not ſerve the heire of the diſſeiſee,

A feme covert is diſſeiſed, the diſſeiſor dyeth ſeiſed, his heire enters, the husband and wife dyeth, the 60. yeares paſſe, the heire of the wife cannot enter, nor retaine,

Becauſe this is a claime upon the ſeiſin of the aunceſtor.

A man ſels his Land by Indenture, and after diſclaimes in an avowry, by which the Lord recovers by a Writ of Right,

ſur

ſur diſclaimer, and enters, and afterwards the vendor inrolls the Deed within the 6. moneths, the vendee enters, the ſixe moneths paſſe, the Lord may enter, and retaine, and if he be ouſted, he may have a Writ of Right, and in all theſe Caſes they claime of their proper ſeiſin, and not of the ſeiſin of their aunceſtor, or predeceſſor.

Two parceners bring a *ſur cui in vita*, the one is nonſuited, ſummoned, and ſevered, the other recovers the moity, and both enter, and afterwards he which recovered, ouſteth the other, and continueth by 60. yeares, yet the other may enter with her ſiſter, and retaine, and if ſhe be ouſted, ſhe may have a Writ of Right, 19. *H.* 6. *f.* 4.

A feme grants a reverſion by deed in fee, and takes the grantee to husband, and after the tenant Attornes, the husband dyeth, his heire enters, the wife ouſteth him, and continueth ſeiſin by 60. yeares, the heire of the husband may enter, and retaine, and if he be ouſted, he may have a Writ of Right,

Becauſe the Attornment is good, contrary if the graunt were to have beene

been perſons, becauſe then that will not paſſe by the Attornment for to prejudice the husband.

A feme ſole makes a feoffement upon a condition that the feoffee ſhall re-en feoffe him when he ſhall be required by him, and takes a husband, and makes requeſt, the feoffee refuſeth by commandement of the husband, the husband dyes, and after the feoffee dyeth ſeiſed, and his heire enters, and continueth poſſeſſion by 60. yeares, the wife may enter, and retaine, and if ſhee be ouſted, ſhe may have a Writ of Right,

Becauſe her entry was chargeable by the refuſall, by reaſon of the firſt condition, notwithſtanding the diſcent, where it is upon condition, 35.*E.*3.11. and the requeſt is good.

Tenant in tayle diſcontinueth, and hath iſſue, a daughter, and dyeth, the 60. yeares paſſe, &c. the daughter takes a husband, the feoffee makes an eſtate to the husband and wife, for the life of *I. N.* the husband dyeth, *I. N.* dyeth, the diſcontinued enters upon the wife, ſhe may enter and retaine,

Becauſe

Becauſe ſhe is remitted, *quære*, becauſe ſhe cannot have an action, by reaſon of the time paſt, and then out of the caſe of remitter, yet it ſeemeth that the iſſue in tayle which is outlawed, and hath a releaſe, may be remitted.

A man is diſſeiſed, and releaſeth all his right to the diſſeiſor, upon condition that the diſſeiſor ſhall enfeoffe him of other Land within a moneth, the time expires, no feoffement made, the 60. yeares paſſe, the diſſeiſee may re-enter & retain, and if he be ouſted, he may have a Writ of Right by reaſon of the condition.

Tenant in tayle diſcontinueth, the 60. yeares paſſe, the iſſue in tayle diſſeiſeth the diſcontinued, and the diſcontinued hath iſſue within age, and dyeth, the heire in tayle dyeth ſeiſed, his heire enters during the infancy of the heire of the diſcontinued, the heire of the diſcontinued cannot enter, nor retaine, by reaſon of the remitter.

A man is diſſeiſed and dyeth, his heire within age, the diſſeiſor dyeth ſeiſed, his heire enters during the nonage of the heire, and continueth

ſeiſin

ſeiſin by 60. yeares, the heire of the diſſeiſee cannot enter, nor claime, nor have action,

Becauſe he claimed upon a ſeiſin of his aunceſtor, which is defended by the Statute.

A man is defaced of certaine Lands, and recovers the Land in a *præcipe quod reddat*, the tenant dies ſeiſed, his heire enters, the 60. yeares paſſe, yet the defac't may enter, and retaine, and if he be ouſted, he may have a Writ of Right.

Note that Deane and Chapter, and the like, by the name of their corporation may make a claim by an 100. years paſt,

For the reaſons rendred in the firſt Lecture.

A man ſeiſed in the right of his wife, is diſſeiſed, or makes a diſcontin. and liveth 61 years, he and his wife die, the heire of the wife ſhall not have action, claime, nor enter,

Becauſe none is aided but thoſe which were covert at the time of the Statute, &c. and the heire doth not claime upon the ſeiſin of his aunceſtor beyond 60. yeares, and an entry is a claime.

If tenant for life, or an Ideot, or a man impriſoned, or beyond Sea, are diſſeiſed and ſuffer the 60. yeares to paſſe, and dyeth, their heire, nor thoſe in the reverſion ſhall not make claime, nor enter, nor have action,

Becauſe if their entries are taken away they ſhall be barred *in perpetuum*, for the reaſon aforeſaid.

If an Infant be ſeiſed at 14. yeares, and hath iſſue, and dyeth before 21. yeares, and every iſſue one after the other, untill 60. yeares are paſt, their heire ſhall never have action, nor claime,

By reaſon of this Statute, becauſe an Infant or the like, are not excepted, but only thoſe which were Infants *tempore Statuti.*

An Infant ſells his Land by deed indented, and inrolls the deed within ſixe moneths, he being within age, the vendee enters, the Infant ouſts him, and continueth by 60. yeares, the vendee may re-enter, and retraverſe, and if hee be ouſted, may have a Writ of Right,

Becauſe the Infant is eſtopped by the inrollment, to ſay that he was within age, *tempore, &c,*

A man hath iſſue, two ſons, and dyeth ſeiſed, the firſt enters, and dyeth ſeiſed, the 60. yeares paſſe, the eldeſt cannot make his claime, nor enter, nor retain, becauſe that notwithſtanding there be a privity in blood, &c. yet he muſt claime of the ſeiſin of his aunceſtor, and an entry is a claime in Law, which is ouſted by the Statute.

A man ſeiſed in fee hath iſſue, a ſon, and a daughter, by one *Venter*, and a ſon by another *Venter*, and gives his Land to his eldeſt ſon in tayle, and dyeth, and after the eldeſt ſon dyeth without iſſue, the daughter of the entire blood ſhall enter, the yongeſt ouſteth him, and continueth ſeiſin by 61. yeares, the daughter cannot make claime, nor enter, and retain, becauſe the fee doth not veſt in the eldeſt ſon by diſcent, by reaſon of the entayle, and therefore it was in abeyance, and yet it is in him for to give and forfeit as a reverſion, &c.

The

The fourth Lecture.

Of *Avowries.*

Where a man ſhall make an Avowry of a longer time then is limited by this Statute, and where not, and what ſhall be good Avowries upon this limitation, and what not.

A Man holds by grand Serjeanty of the King, diſtraines, and alleageth ſeiſin within 50. yeares, and avowes for ayde to marry his daughter, the Avowry is not good, 10. *H.6.* by all the Juſtices, Be-

Becauſe none ſhall pay ſuch ayde, but tenants in Soccage, or Chivalrie, and not tenant by grand Serjeanty, *nec alii.*

Replevin againſt two, of a horſe taken, who come, and one of them avoweth for a rent charge, and the other for a rent ſervice out of the ſame Land, and both alleage ſeiſin within 50. yeares, this is a good avowry upon this limitation, 31. *E.* 3. *in Fitz.* 241.

Becauſe it is not like to coparceners, betwixt whom is privity.

A man avowes the taking of two Clothes for toll due, 52. yeares paſt. by cuſtome to deſtraine the goods of the buyer within the village for toll, &c. this is a good avowry, notwithſtanding this Statute,

Becauſe it is not for rent, ſuit, nor ſervice, 20. *E.* 3.

Avowry, becauſe the cuſtome of his Mannor is, that if any one breake the pound, that he and his anceſtors *de tempore, &c.* have uſed to diſtraine for x. s. this is good, notwithſtanding this Statute,

Becauſe the proſcription is good betwixt

twixt Tenants of the Mannor, and it is not for rent, ſuit, nor ſervice.

Lords meaſne, and Tenant, the meaſne is in arrerages to the Lord, the Lord diſtraines the Tenant, the Tenant forejudges the meaſne, the Lord accepts the rent, and ſervices by the hands of the Tenant, and after avowes upon the Land for the arrerages of the meaſne, and alleageth ſeiſin within 50. yeares, this is no good avowry for the arrerages,

Becauſe this is the act of the Tenant, and cannot doe otherwiſe but take him for his Tenant, 7. *E.* 3.

Avowry for xx s. for bloodſhed preſented upon the plaintiſe in his Leet, 51. yeares paſt, according to the cuſtome, &c. this is a good avowry notwithſtanding this Statute, which ſpeakes of 50. yeares,

Becauſe it is not for rent, ſuit, nor ſervice, and the cuſtome is good.

Grandfather, Father, and Son, the Grandfather holds of the Lord by Harriot, Reliefe, and xii.d. rent, the Grandfather dies, the Father enters, and enfeoffs the Son, and dies, the Lord accepts the rent of the Son, and within 50. yeares

distraines and avowes upon the son for the Harriot and relieſe of his Grandfather, due within the 50. yeares, and alleages ſeiſin within 50. yeares, this avowry will not ſerve upon this limitation,

Becauſe by the acceptance of the rent and ſervice of the ſon he hath loſt the Harriot and relieſe, and all the arrerages, 4. *E.* 3.

A man ſeiſed of a Mannor in right of his wife, leaſeth the Mannor for xx yeares, rendring x. li. by the yeare at Michaelmas, the wife dies without iſſue before Michaelmas, after Michaelmas paſt, the leſſor may diſtraine and make an avowry by this Statute,

Becauſe that untill the wife enters, the tenant ſhall render the rent to the husband.

Avowry becauſe the cuſtome of the Mannor is to have x. li. for a fine of every villaine there which marrieth his daughter without licence, and that ſuch a villaine married there within 50. yeares without lilence, &c. and therefore avoweth, this is not good,

Becauſe he may take the goods of his villain by the common Law.

A man distraines his Tenant for homage due 50. yeares past, the Tenant dyes, his Executor sueth a Replevin after 50. yeares, the defendant justifies for homage, which was due 50. yeares past, and that the tenant is dead, this is a good justification, notwithstanding the Statute.

Because the Statute speakes only of an avowry, and cognisance, and not of justification.

A man is the Kings Baily, makes cognisance for xx.s. rent, against the plaintife, and declares of seisin in the King, by the hands of the plaintife 60. yeares past, this is a good cognisance,

Because the King is not bound by the Statute,

Avowry for x. s. Amerciaments in a Leet for breaking of the assise of bread and beare 50. yeares past, this is good,

Because it is not for rent, custome, nor service.

A man graunts a rent charge of x. li. payable yearely at Michaelmas, and if it be behinde fourteen dayes, then to distraine aswell for the Rent, as for xx. s. *nomine penæ*, in this case, if it be behinde

by 14. dayes, 50. yeares paſt, the grantee may diſtrein and avow for the penalty, but not for the rent,

Becauſe out of the caſe of the Statute,

In a Replevin the Defendant ſaid that *W.* leaſed the Mannor of *D.* to *I. N.* for terme of life, and he as baily to the ſaid *I. N.* diſtreines for rent due 51. yeares paſt, and this day the ſaid *I. S.* dyed, and the Tenant that now is, had ſued a Replevin, this is a good juſtification after this limitation, notwithſtanding this Statute,

Becauſe this is a juſtification, &c. and the Statute 32. is, that the Executor may make an avowry, or have debt, but the avowry of the party is determined by his death.

Tenant in tayle aliens in fee, an anceſtor collaterall of the donor releaſeth with warranty, and dyes without iſſue, the donor diſtraines and avowes for the rent upon iſſue in tayle, and not upon the feoffee for the arrerages due within 50. yeares, and after the feoffement this avowry is not good upon this limitation,

Becauſe

Becauſe that notwithſtanding that hee ſhall not be driven to avow upon the feoffee, and the feoffee connot plead the matter, and the warranty doth not extend to ſervice, yet the ſervice is incident to the reverſion, which is determined by the collaterall warranty deſcended, and by the grant or releaſe of the reverſion, the rent paſſeth, and it appeareth 31. *aſſ. tit. Reſervation* 11. that the ſervices cannot be taken from the reverſion by grant, becauſe they are incident, and the rent paſſeth not, but as a rent ſeck, of which no avowry lyeth, and therefore a determination of the reverſion, is a determination of the rent.

Lord and Tenant by Harriot, the leſſor diſtraines, and avowes upon the heire for Harriot of the Grandfather, and for Harriot of the Father of the plaintife upon a ſeiſin 50. yeares, this is a good avowry upon this Statute,

Becauſe all is upon one ſurvey.

Lords meaſne, and tenant, and every one holds of the other in chivalry, the tenant goeth with the King into Scot-

land by the common ſummons of the King, and the meaſne doth not goe, the Lord diſtraines and avowes upon the meaſne for eſcuage by a ſeiſin within 50. yeares, &c. this is not a good avowry upon this Statute, notwithſtanding it bee within 50. yeares,

Becauſe the avowry of the tenant ſhall ſerve the meaſne, becauſe that if the tenant doe the ſervice, that ſufficeth.

Lord and Tenant, the Tenant diſclaimes in avowry, the Lord dyeth, the ſon diſtraines, and alleageth ſeiſin in the Father within 50. yeares, and avowes for rent due to him within 50. yeares, this is a good avowry upon this limitation,

Becauſe the ſon cannot have a Writ of Right upon diſclaimer, upon a diſclaimer made in the life of the father.

An avowry, for that *I. S.* holds three acres of him by fealty, and a Hawke, which was arer. by x. yeares, and that afterwards he enfeoffed the plaintife of one acre, which was in arer. by two yeares, and he comes and diſtraines the Cattle

Cattle for all the arrerages for x. yeares, and avowes for two Hawkes for two yeares due, that is to ſay, x. cattle for one rent, and two for another, and alleageth ſeiſin within 50. yeares, &c. this is a good avowry upon this limitation, 22. *E.* 4.

Becauſe that every acre is charged with the entire arrerages which was due before this feoffement, and every one ſhall hold by one Hawke after the feoffement, and ſo now hee ſhall have two Hawkes, and he may charge the feoffee with the arrerages of all.

Avowry for ayde to make the ſon a Knight, the Land is of the value of x. li. by the yeare, which is holden in Soccage, and the ſon of 15. yeares of age, &c. and alleageth ſeiſin within 50. yeares, the plaintife pleads a releaſe made by the Lord to him by 9. yeares paſt, of all ſutes, ſervices, and demands, beſides fealty, and x. s. rent, this is no good avowry, notwithſtanding this matter,

Becauſe that that which is incident cannot bee releaſed by generall words, 40. *E.* 3. 14.

A man distraines for ayde to marry his daughter 51. yeares past, the Tenant cannot sue a replevin untill after the one and fifty yeares, the Lord upon the matter makes an avowry for ayde due 51. yeares past, which is out of this limitation, yet this is a good avowry, notwithstanding this Statute,

Because the ayde is incident to the tenure, and is not rent, sute, nor service,

A village is assessed to x.li. for the fees of the Knights from the beginning of the Parliament, 51. yeares past, and cannot agree of his taxe betwixt them, by which the Sheriffe distraines the village, and makes an avowry for this summe due, 51. yeares past, this is good,

Because it is not rent, sute, nor service,

Fitz. Avowry, 13. *E.* 4.

The Guardian endowes the feme the time of the second husband, reserving 3. s. rent by the yeare for equality, and makes an avowry for the rent against the feme after the death of the second husband, and alleageth seisin within 50. yeares, the avowry is not good upon this limitation, 17. *E.* 3.

Because

Becauſe the woman was covert, *tempore, &c.* and it is not like a rent reſerved upon partition, &c.

Replevin, the defendant avowes for that that he leaſed his Land after this Statute, to the plaintife at, in, &c. for the yearely rent of xx. s. *per annum*, at, to, and in, and for the rent due at, in, &c. and within 50. yeares after he diſtraines, and avowes, this avowry is not good by this Statute, &c.

Becauſe when the terme is ended, he cannot diſtraine.

I. N. holds of *W. S.* two acres of Land by 2. ſhillings, and 3. other acres by 3. ſhillings, the Lord diſtraines two Cattle in one Land, and two in another, and avows for 5. ſhillings by ſeiſin within 50. yeares, this is not good,

Becauſe he ſhall make two avowries.

Lord and Tenant of three acres of Land holden by 3. d. rent, the Tenant leaſeth one acre to the Lord for 12. yeares, the Lord diſtraines in the other two acres, and makes an avowry for two pence upon this limitation, this avowry is not good,

Becauſe

Becauſe a ſuſpenſion for part is a ſuſpenſion for all, but by the extinguiſhment of part, the reſt ſhall be apportioned. *Nota differentiam.*

Lord and two joyntenants by fealty 2. s. and ſute of Court, the Lord brings a *Ceſſavit* againſt both, and hath execution, and diſtraines in the other moity, and makes an avowry for ſute upon a ſeiſin within 50. yeares according to this Statute, this avowry is not good,

Becauſe by this recovery and execution the entire ſute is gone, becauſe he cannot be contributory to himſelfe, contrary of a rent, becauſe that ſhall be apportioned, note the difference.

Lord and Tenant by fealty and foure ſhillings rent, the Lord releaſes the rent to the tenant, and to the heires of his body, the tenant dies without iſſue, the Lord diſtraines his next heire, and makes an avowry upon this limitation, for rent due after the death of the Tenant, the avowry well lyeth,

Becauſe

Becauſe a releaſe for one houre to tenant in fee-ſimple, as to the title of the Land is good for ever, and yet contrary of a rent Fitz Voucher 120. 13. *E.* 3. 92. becauſe that was his eſtate in the rent, and ſo is it there adiudged.

Lords meaſne and tenant, every one holds of each other by iiii. d. the Lord releaſeth to the Tenant all his right in the Land, and after the meaſne diſtraines and avowes for iiii. d. upon the tenant, upon this limitation the avowry doth not lie,

Becauſe by the releaſe the moity is extinct.

Lord and Tenant by fealty, and iiii.d. rent, the rent is behinde, the Lord diſſeiſeth the Tenant of the ſame Land, and continueth poſſeſſion by a yeare, and after the tenant recovers by an Aſſiſe, the Lord diſtraines and makes an avowry for arrerages due before the diſſeiſin upon this limitation, this is a good avowry, 8. *E.* 3. 37.

Becauſe

Becauſe all is received by the recovery, and nothing ſhall be recompted, but that which is before the unity.

A man hath iſſue, a ſon, and a daughter, by one *Venter*, and a ſon by another, and is ſeiſed of two acres of Land, and grants x.s. rent charge in fee out of one to the ſon, the ſon dies without iſſue, and after the father dyes, the daughters enter, and make partition, and the acre charged is allotted to the youngeſt, the eldeſt daughter diſtraines his ſiſter, and makes an avowry upon this limitation for 5.s. this is goods,

Becauſe nothing is extinct but the moity of the rent, for nothing is deſcended of the Land to the eldeſt daughter but the moity of the land, but the entire rent is deſcended to him, 34.*E*.3. *Quintons Caſe*.

A man makes one Steward of his Mannor, and gives x. li. fee to him with diſtreſſe, *& officio ſuo exequendo*, with manger and boyer for terme of life, and the Steward leaſeth the fee, and the manger and boyer to the Lord of the Mannor for foure yeares, rendring to him 12. li. *per annum*, with clauſe of diſtreſſe

ſtreſſe in the Mannor by deed indented, the Steward doth not keep the Courts, and afterwards diſtraines for the 12. li. and makes an avowry upon this limitation, the avowry doth not lie,

Becauſe it is extinct by the *nonfeaſance* of the ſervices, &c. 20.*E*.4. 12. becauſe when the Rent comes by reaſon of the Land, there a leaſe to the Lord is a ſuſpenſion, but contrary, where it commeth *ratione perſonæ per Curiam.*

Tenant in taile aliens in fee with warranty, and leaveth aſſets and dieth, the iſſue is barred in a formedon, the donor deſtraines and avowes upon the heire in taile of the ſeiſin within 50. yeares, the avowry is good upon the Statute,

Becauſe this is nothing to the doner.

The

The fifth Lecture.

Of *Formedons.*

Whereas the Statute is, that Formedons in reverſion ſhall be brought within 50. yeares after title, and cauſe of action accrued. It is to be ſeen to whom action ſhall be ſaid ſufficiently accrued to take advantage of the Statute, and from what time the 50. yeares ſhall be accounted, & è contra.

A Man lets Land to one for life, the remainder to his own wife in tayle and dyeth, the Tenant for life dies, and *I. N.* enters, Action is not accrued to the wife to have a formedon in remainder within the 50. yeares,

Becauſe a gift immediat to his owne wife

wife is not good, but contrary, of a feoffement to an uſe, or a demiſe, but if he in the remainder be not capable at the time of the livery, hee ſhall never bee as in the caſe of *Rikhill.*

A man lets for life the remainder of *I. N.* in fee, *I. N.* enters in religion, the leſſee for life dies, the brother of *I.N.* enters, and commits felony, and is attainted, the Lord enters for an Eſcheate, *I.N.* is deraigned before 30. *H.* 8. no action of formedon in the remainder is accrued to him,

Becauſe it was executed before in his heire, and the forfeiture for felony is executed alſo, and religious perſons ſhall not be capable by the Statute of 31.*H.*8.

A man leaſeth for life the remainder to Deane and Chapter, and to the heires of the Deane, the Tenant for life dies, *I. N.* enters, the Deane and Chapter which then were, die, and others are choſen, action is accrued to the heire of the Deane by a formedon in the remainder, but not of all,

Becauſe he had but a moity only.

A

A man leaſeth for life the remainder in taile, the tenant for life alieneth in fee, no formedon in remainder is accrued to him in the remainder,

Becauſe tenant for life is yet living, and during his life a formedon lyeth not.

Lord meaſne and tenant, the meaſne graunts his menaſltie for terme of life, the remainder over in taile, the remainder over in fee, the tenant attornes, the tenant brings a Writ of meaſne againſt the meaſne for terme of life, and forejudges him, the meaſne for life dyeth, a formedon is not accrued to him in the remainder,

Becauſe the tenant of the Lord paramount, by the forejudger, and all the remainders is but the ſame ſeigniory, becauſe that albeit forejudger doth not lie againſt tenant for terme of life, nor againſt tenant in tayle, nor a feme covert, yet the judgement is not void, but error, and the action doth not lie untill judgement reverſed, and in remainder by equity of the Statute, which ſpeakes of reverſions, *9.R.2.cap.3.*

A

A man gives Land for terme of life, the remainder in fee, the tenant for life is diſſeiſed, the Lord brings a Writ of Right, the Lord diſclaimes againſt the diſſeiſor, and recovers upon the diſclaimer, the tenant for terme of life dyeth, the Lord enters, action is accrued to him in the remainder, by a formedon in remainder,

Becauſe that he in the remainder is not bound.

A man gives in tayle to *I. N.* who leaſeth for life, and enters, and dies without iſſue, 60. yeares before Aſcenſion, 1546. the tenant for life dyes 26. yeares after, he in the reverſion may have a formedon in reverter poſt. *I. N. habit. religionis aſſumpſit,*

Becauſe the Regiſter warrants, or formedon in diſcender and reverter; but *quære* of a remainder, and the action doth not fall untill after the death of tenant for life, and the Stat. of 31. doth not make them capable which are expelled out of a houſe diſſolved.

A woman ſells her land to two by Indenture, to have to one for terme of life,

A man leaſeth for life the remainder in taile, the tenant for life alieneth in fee, no formedon in remainder is accrued to him in the remainder,

Becauſe tenant for life is yet living, and during his life a formedon lyeth not.

Lord meaſne and tenant, the meaſne graunts his menaſltie for terme of life, the remainder over in taile, the remainder over in fee, the tenant attornes, the tenant brings a Writ of meaſne againſt the meaſne for terme of life, and forejudges him, the meaſne for life dyeth, a formedon is not accrued to him in the remainder,

Becauſe the tenant of the Lord paramount, by the forejudger, and all the remainders is but the ſame ſeigniory, becauſe that albeit forejudger doth not lie againſt tenant for terme of life, nor againſt tenant in tayle, nor a feme covert, yet the judgement is not void, but error, and the action doth not lie untill judgement reverſed, and in remainder by equity of the Statute, which ſpeakes of reverſions, *9.R.2.cap.3.*

A

A man gives Land for terme of life, the remainder in fee, the tenant for life is diſſeiſed, the Lord brings a Writ of Right, the Lord diſclaimes againſt the diſſeiſor, and recovers upon the diſclaimer, the tenant for terme of life dyeth, the Lord enters, action is accrued to him in the remainder, by a formedon in remainder,

Becauſe that he in the remainder is not bound.

A man gives in tayle to *I. N.* who leaſeth for life, and enters, and dies without iſſue, 60. yeares before Aſcenſion, 1546. the tenant for life dyes 26. yeares after, he in the reverſion may have a formedon in reverter poſt. *I. N. habit. religionis aſſumpſit,*

Becauſe the Regiſter warrants, or formedon in diſcender and reverter; but *quære* of a remainder, and the action doth not fall untill after the death of tenant for life, and the Stat. of 31. doth not make them capable which are expelled out of a houſe diſſolved.

A woman ſells her land to two by Indenture, to have to one for terme of life,

and to another in tayle, the remainder in fee, and delivers the deed, and after takes a husband, and after he and the wife within the 6. moneths cause that to bee enrolled, and acknowledge it to be the deed of the wife, the tenant for life dies, the husband holds possession, a formedon in remainder is not accrued to him in the remainder,

By reason of the husbands interest.

A man seised of a rent, grants that to another, to him and his heires, or to the heires of his body, the remainder in fee, provided, that if the grantee die, his heires females within age, that the rent shall cease during their nonage, the grauntee hath issue, two daughters, one within age, and the other of full age, and dyeth without issue male, *I. N.* haps the rent, action is accrued by a formedon in remainder, to him in the reversion in fee,

Because one is of full age, and therefore the rent shall not cease.

A man disseised of two Acres by the Bishop of *L.* and after releases to the Bishop and his successors, the Bishop gives in tayle, and dyeth, the tenant in tayle dies without issue, a formedon in rever-

re-

ter accrues to the ſucceſſor of the Biſhop, and not to his heire,

Becauſe where he was a diſſeiſor of the fee at the firſt to him and his heires, the releaſe enures to an entry and feoffement.

Land in Gavelkinde is given to one in tayle, who takea a wife and dies without iſſue, the wife holds all in dowre by cuſtome, and dyeth xx. yeares after the death of the husband, *I. N.* enters, he in the reverſion brings a formedon in reverter 60. yeares after the death of the husband, and after this Statute, the action is well brought by this branch of the Statute,

Becauſe the action is not accrued untill after the death of the wife, and ſo is it taken within 40. yeares after her death.

A man of *non ſane* memory made a feoffement in fee, and after is made Biſhop of *R.* the feoffee enfeoffes the Biſhop to him and his ſucceſſors which gives in tayle, the tenant in tayle dies without iſſue, the Biſhop dies, a formedon in reverter is accrued to the heire of the Biſhop, and not to his ſucceſſor,

Becauſe by the refeoffement the Biſhop was remitted, for his entry was congeable.

A man gives in tayle, the remainder in fee, the Lord brings a reſtraint againſt the tenant in tayle, and he appeares, and leaſeth, and dies without iſſue, a formedon in remainder ſhall not accrue to him in the remainder within the 50. yeares,

Becauſe the Land is loſt by iudgement, by Statute Law of W. 2. 21.

A man leaſeth for life the remainder in tayle, to another the remainder in fee, to the firſt Tenant by a Fine, the Tenant for life dies, and he in the remainder in tayle dies without iſſue, *I. N* enters, action is accrued by *Scire facias* within the 50 yeares to the heire of the tenant for life, notwithſtanding the ſeiſin of his Father,

Becauſe the fee was not executed. 38. *E.* 3. 21.

A man leaſeth for life upon condition, that if the leaſee hath iſſue in his life, that the Land ſhall remaine over to *W. N.* in fee, the leaſor recovers againſt the leaſee, by a Writ of Waſte, and hath execution, the leaſee hath iſſue and dyeth

no action of formedon is accrued to *W. N.*

Becauſe the fee remaines in the leaſor untill the tenant hath iſſue, and then the recovery defeates the firſt Livery.

A man gives to husband and wife in ſpeciall taile by Fine, the wife dyes without iſſue, the husband leaſeth his eſtate to him in the reverſion, upon a condition, and for the condition broken he re-enters and dyeth, a ſtranger enters, action is accrued to him in the reverſion within the 50. yeares by *Scire facias*,

Becauſe the execution of the eſtate is defeated by the entry, by the condition, and he in the reverſion may well have an action, 38. *E.* 3.19.

A man leaſeth for life the remainder in tayle to *I. N.* the tenant for life is diſſeiſed, an anceſtor collaterall of the Tenant in tayle releaſeth with warranty, and dyes without iſſue, the tenant for life re-enters upon the diſſeiſor and dyeth, the diſſeiſor re-enters, a formedon in the remainder is not accrued to him in the remainder,

Becauſe the entry of tenant for life

ſhall not remaine, the remainder which was bound by the diſcent of the collaterall warranty before the entry, &c. 44. *E.* 3.

Lord and Tenant, the Tenant dies without heire, *I. N.* enters and leaſeth to the Lord for terme of another mans life, the reverſion over in tayle, *ceſty que vy* dyeth, a formedon in remainder is accrued to him in the remainder,

Becauſe the Lord cannot be remitted, becauſe he had no right of entry, but a title, and he had diſcloſed his intent to the contrary.

A man levyeth a Fine of a Mannor for terme of life, the remainder over in fee, and after a tenant of the Mannor dyeth without heire, the conuſor enters in the Land, and hath the Mannor, the tenant for life dyeth, he in the remainder ſhall have a *Scire facias* of the Mannor within the 50. yeares, and recover the Land eſcheated againſt him which enters, &c.

And here it ſhall be by the name of a Mannor, becauſe now this is parcell of the Mannor, becauſe it is come inſtead of the ſervices, yet if he enter in this parcell only, it ſeemeth that a *Scire facias* will not lie of that.

A man demiſeth Land to *I. N.* for life upon condition to be Chaplaine, and to pray for the ſoule of the demiſor, the remainder to another in tayle, the demiſor dyeth, *I. N.* taketh the profits by 6. yeares, and is no prieſt, the heire of the deviſor enters, *I. N.* dyeth, a formedon in reverſion is accrued to him in the remainder within the 50. yeares,

Becauſe the entry by the condition, which depends only upon one eſtate, doth not defeat the remainder, which was not tyed to the condition, but contrary where there was no remainder; Note the diverſity.

A man leaſeth to *I. N.* and *E.* his wife for life, the remainder over in fee, *I. N.* dyeth, and it is enacted by Parliament, that all eſtates made to the ſaid *I. N.* ſhall be void, and the wife 12. yeares after Act of Parliament dyeth, he in the remainder 60. yeares after the Act, may have a formedon in remainder by this branch of the Statute,

Becauſe the eſtate of the wife, nor the remainder are not void by the limitation, not accruing untill after the death of the wife, and it is brought within 48. yeares, &c. 5. *H.* 7. 30.

A man leaſeth for life the remainder over in fee, the tenant for life leeſeth by erroneous judgement, and dyeth, and he in the reverſion twelve yeares after the death of tenant for life, brings a Writ of errour, and reverſeth the judgement, and an eſtranger enters, and he in the remainder brings a formedon 60. yeares after the death of tenant for life, the action well lyeth by the branch of this Statute, which ſpeaketh of 50. yeares,

Becauſe the action is not accrued untill after the reverſall, and a Writ of error is not an action, nor a releaſe of actions is not a plea in this, and he in the remainder ſhall have error by equity of the Statute, by him in the reverſion.

A man grants a ſeigniory in groſſe to one in tayle, the remainder over in fee by Fine, the Tenant attornes, and after aliens in Mortmaine, the Tenant in tayle enters, and makes a feoffement of the Land, and dies without iſſue, no *Scire facias* is accrued to him in the remainder of the Land, nor of the Rent,

Becauſe the Land was not given, and the ſeiſin was determined by the entry

try of the Tenant in tayle, and the Statute of Mortmaine saith, that *Capitalis Dominus intrabit, & retinebit in feodo*, and therefore is a *perquisite* to him, and the Booke of 44. *E.* 3. is no rule that a *Scire facias* shall lie of the tenancy, in lieu of the services.

A man leaseth for life, the remainder over in tayle, the Tenant for life leaseth to Tenant in tayle for the life of Tenant in tayle, who dyeth without issue, the Tenant for life enters, a formedon in remainder is not accrued to him in the reversion,

Because the lease of the Mannor is not a surrender, nor forfeiture, *tit. dowre Fitz. & Park. fo.* 20. 7. *H.* 6. 4.

A man leaseth for life the remainder in tayle, the remainder in fee, the Tenant for life grants his estate to him in the remainder in tayle, and to *I. N.* he in the remainder in tayle dies without issue, action of formedon is not accrued to him in the remainder in fee,

Because the tenant for life, and *I. N.* are living, and it is no surrender for the advantage of the survivor *I. N. Gascoignes case*, 7. *H.* 6. The

The sixth Lecture.

Seisins and *Trials*.

What proofes upon such issues limited by the Statute shall be sufficient, and contrariwise, and what trials upon that shall be good, & e contra, and who shall be bound by them, and who shall take advantage, and where the party may refuse the triall, & e contra: And what matters shall lie in triall, notwithstanding this Statute, as before this Statute, & e contra.

Owre, they are at issue that the husband was never seised of such an estate of which she was dowable, &c. the wife proves seisin 61. yeares before the teste of the Writ, this a good proofe of the seisin to recover, notwithstanding this Statute,

Because that this is of the seisin of the husband, and not of the party, her ancestors, or predecessors.

In an assise of Common they are at issue,

ſue, *ne unque ſeiſe* ſo that he might be diſſeiſed, the plaintife ſaid that *I. N.* was ſeiſed, and grants to him in fee, and becauſe he had not Cattle of his owne, hee puts in Cattle of others, with the aſſent of the grantor, this is a good proofe of the ſeiſin to have an Aſſiſe, 22. *E.* 3. p. 84.

Dowre of rent they are at iſſue *ne unq; ſeiſe*, the plaintife prooves that the rent was granted by the husband in fee, upon a proviſo, that if he die his heire within age, that the rent ſhall ceaſe during the nonage; the father dyeth the ſon within age, and takes the demandant to wife, and dies before 21. yeares of age, this is no good proofe of ſeiſin,

Becauſe the rent had not eſſens during this time, and it is not like the caſe of 24. *E.* 3. where ſhe was endowed with a *ceſſet executio*, becauſe there the husband was ſeiſed indeed, and it is not like a Dowry of a ſeigniory in ſuſpence, as where the Lord marryeth his Tenant, which is a woman, he dies, ſhe ſhall be endowed of the ſeigniory, but here the rent ceaſeth by matter in fayt, and not by matter in Law.

Dowre,

Dowre, The parties are at iſſue upon *ne unque ſeiſe, &c.* the demaundant proves a leaſe for life made by an eſtr, the remainder to her husband in tayle, the tenant for life leaſeth to the husband for life of the husband, the husband dies, the tenant for life enters, and ſhe brought dowre, this is no proofe of the ſeiſin,

Becauſe it is no ſurrender nor forfeiture, and the tenant for life which leaſeth, ſhall have the reverſion in this caſe.

In dowre they are at iſſue upon the ſeiſin, the tenant ſhewes that the husband was his villeine, and purchaſed, wherefore he entred upon the husband, the Plaintife ſayes that this purchaſe and entry was during coverture, and the husband dyed, &c. this is a good proofe of ſeiſin to have dowre,

Becauſe the title of the Lord is not untill his entry, and therefore the wife had the elder title.

A woman hath iſſue, a ſon, and conſents to the raviſhor, the mother leaſeth to the ſon for terme of life by deed poll, the ſon hath iſſue & dies, the mother enters, the iſſue brings a Mortdan, and they

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are at iſſue upon the ſeiſin, the iſſue gives all the matter in evidence for ſeiſin in fee upon the lawfull entry of his father, this is no good proofe of ſeiſin,

Becauſe that he which hath but a title of entry, and not a right of entry, cannot be remitted.

In an Aſſiſe they are at iſſue upon *Ne unque ſeiſe, &c.* the Pl^t. gives in evidence that *I.N.* holds the Land of him, and was attainted of felony, and that the King ſhould have *annum diem & vaſt.* and grants it over, the defendant enters upon the grauntee within the yeare, and the Pl^t. brings an Aſſiſe within the yeare, this is a good proofe of the ſeiſin,

Becauſe he can have no other ſeiſin during that yeare.

Aſſiſe, they are at iſſue upon *Ne unque ſeiſe,* the plaintife gives in evidence that the Land is demiſable, &c. and that *I. N.* his teſtator was ſeiſed, and demiſed to him, being his executor to ſell, &c. and dyeth, the plaintife enters, and the defendant ouſts him, and he brings an Aſſiſe, this is a good proofe of ſeiſin, *per judicium,*

Becauſe he had the fruit againſt an eſtranger,

eſtranger, untill the heire may eſpy a forfeiture, and makes actuall entry.

Tenant by the courteſie of a rent charge granted to his wife in fee, to bee paid at *Michaelmas*, his wife dies before the feaſt, he makes an Avowry, the Tenant traverſeth the ſeiſin which is found for him, the Tenant by the courteſie dyeth, the heire of him and his wife diſtrain and makes an Avowry upon the ſame grant, he ſhall not be bound by the ſame triall,

Becauſe the judgement is only to recover damages, and he claimes as heire of his mother, and not as heire to the father, and avoweth by the grant, for the ſeiſin is not materiall; And becauſe that he in the reverſion may fanxeſie the recovery in another point which was not tryed, as to ſay that another had title to the ſeigniory, and not the avowant, and ſo the ſeiſin void.

In a Mortdaunceſtor the Tenant traverſeth the ſeiſin, the Jury finde that the grandfather dyed ſeiſed, and that afterwards the father of the demandant dies before that any ſtranger enters, and after dies,

dies, and the Tenant abates, this is good proofe of ſeiſin, but yet it ſhall not ſerve, but this triall ſhall binde the demandant, &c.

Becauſe the Stat. ſpeakes of an actuall ſeiſin, and this is a ſeiſin in Law.

Lord meaſne and tenant, the Tenant traverſeth the ſeiſin in an avowry againſt the meaſne which is tryed for him, and afterward forejudgeth the meaſne, there the Lord may diſtraine and make avowry, and ſhall not be bound by the ſaid triall,

Becauſe he avoweth for his ſeigniory, and he is not heire to the meaſne.

A woman ſeignioreſſe, meaſne and tenant, the meaſne is bound to acquittall, ſhe takes a husband, the tenant releaſeth to the woman, and his heires acquit, the husband and wife have iſſue, the wife dies, the tenant brings a Writ of meaſne againſt the husband, contrary to his acquittall by preſcript, in the wife and her auncеſtors, the husband traverſeth the ſeiſin which is found againſt him, and hee dies, the heire ſhall not bee bound by this tryall in another Writ of meaſne,

Be-

Becauſe he hath a releaſe to plead, and hath the menalty, as heire to his mother, and not as heire of his father, and may falſifie, *ut ſupra*: And this action is not to recover Land, Tenements, nor Hereditaments, but goeth by way of diſcharge.

Tenant for life, the reverſion to another in fee is impleaded by a *præcipe*, *&c.* and traverſeth the ſeiſin which is found againſt him upon a faint title by covin, and the demaundant recovers, the Tenant for life ſurrenders, he in the reverſion ſhall be bound by this triall, *viz.* during the life of the Tenant which ſurrenders, and not afterwards, notwithſtanding the Statute of 32. of Recoveries by covin, as where Tenant for life grants a rent, and ſurrenders, &c. And *Nota* that he in the reverſion may falſifie in a title in another point, which was not tryed, but he which may have an attaint, cannot falſifie in the ſame point, which was tryed, and he in the reverſion may have an attaint and error by the Statute of *R.* 2. and this recovery is as a purchaſe.

A Segniory is given to two, and to the Aires of one, he which hath the fee dies, hee which ſurvives diſtraines, and makes an avowry, the tenant traverſeth the ſeiſin which is found for him, the Defendant dies, and the heire of the other diſtraines and makes an avowry upon the ſame ſeiſin, he ſhall not be bound by the firſt triall.

Becauſe the firſt judgement is not to be barred of the ſeigniory, but onely to recover dammages, and alſo hee is not heire to him which was party to the trial, but to another which had the fee, yet he had a reverſion at the time, &c. And he in the reverſion, and thoſe which may have error or attaint are bound by the common Law, and ſhall not falſifie the point which was tried by verdict, contrary in other points, and contrary of them which cannot have error nor attaint; note the difference by many books, and by the Statute of 9. *R.* 2. *c.* 3.

A feme Covert brought a Writ of Aile after Aſcenſ. &c. the tenant traverſeth the ſeiſin which is found for him,

and after the husband and wife die, and the heire brings a Writ of coſenage, he ſhall be bound by this tryall,

Becauſe albeit the barre be at liberty, yet it is contrary of the wife.

An Infant brings a *precipe* by Attourny, as a man of full age, the tenant ſaid that he is an infant, judgement if he ſhall be by Attourney, and yet the Court admits him by Attourney, the tenant traverſeth the ſeiſin which is found for him, the demandant and his heires ſhall be bound by this triall for ever,

Becauſe this is not errour, and an infant is not excepted in the Statute.

Lord and tenant, the tenant is diſſeiſed, the Lord brings a Writ of Cuſtomes and ſervices againſt the deſſeiſor, who traverſeth the ſeiſin, which is found againſt the Lord, the deſſeiſee reenters, the Lord diſtraines him & makes an avowry upon the firſt ſeiſin, the diſſeiſe ſhall have advantage to barre him by the firſt tryal.

Becauſe he made plede, *per que eſtate* and bind the Lord, becauſe the judgement was given againſt the Lord, and ſo he barred.

A man ſeized in right of his wife, make

a feoffment in fee, the husband dies, the feoffee is impleaded and traverseth the seisin which is found for him, the wife brings a *cui in vita*, and recovers, the demandant in the first *precipe*, brings another *precipe* against the woman, she shall have advantage of the first triall,

Because the demaundant was once barred, and so his right extinguished.

A man makes a feoffment in fee upon condition the feoffee is impleaded after Ascention, &c. and traverseth the seisin which is found for him, the feoffor enters after the condition broken, the demaundant brings a new Writ against him, the feoffor shall have advantage of the first tryall, for the reason aforesaid.

Avowry by the Lord upon the tenant for x.s. rent, and alleageth seisin within 50. yeares, the plantife alleageth a confirmation by the deed of the father of the Lord 60. yeares past, tenend. by iiii.d. for all rents, and services, besides fealty, this is a good barre notwitstanding this Statute.

Because the Statute saith onely, that a man shall not have a writ, nor make

a preſcription, title, nor claime beyond that limitation, but it doth not ſpeak of bars in defence of poſſeſſion, and therfore it ſeemeth that the eldeſt barre ſhall be tryed by the intention of that Statute, becauſe the words of the preamble are, that the eldeſt ſeiſin ſhall not be diſturbed.

Avowry for Rent upon this limitation, the Plaintiffe pleads a Releaſe of all actions made 51. yeares paſt by the Avowant to the Plaintiffe, this is a good Plea, and ſhall be tried notwithſtanding this Statute, *Tit. bar. in Fitz. 8. H. 6. 10. & 27 E. 3. ibid.* that it is a good barre.

Lord and tehant of 3. Acres of Land by fealty, and two ſhillings, the Lord diſtraines in the Acre, and avoweth for xii.d. the Plaintiffe ſaith that 60. yeares paſt he leaſed the other Acre to the Lord for 60. yeares, which are yet induring, judgement, if hee ſhall avow for any thing in the other Acre during the terme; this is a good Plea, and ſhall be tryed, notwithſtanding that it be out of the limitation,

Becauſe a ſuſpention of part, is a ſuſpention of all, contrarie, of an extinguiſh-

guiſhment of part, becauſe there may be an apportionment in that caſe.

A Mortdanceſter of a ſeiſin within 50. yeares, the tenant ſaid that the demaundant himſelfe leaſed for terme of life to him 52. years paſt by his deed, &c. judgement, &c. and this is a good bar, and ſhall be tryed notwithſtanding the Statute, &c. and this notwithſtanding that it was in the life of the aunceſter, and without anſwering to the dying ſeiſed.

Becauſe the Writ and Declaration is but a ſuppoſall, and the barre is matter in fait.

A fine is levyed of land, which is ancient demeane, and after *I. H.* brings a Writ of right cloſe in the Court of ancient demeaſne, and recovers the land upon iſſue, upon the ſeiſin againſt the tenant in taile, which dyeth, his iſſue ſhall be bound by this tryall,

Becauſe it is not void but voidable, becauſe it is impleadable there by a part right patent, and it is but one writ brought for another.

An Aſsiſe, the tenant ſaith, that the great Grandfather of this plaintiffe, infeoffed *W. N.* who infeoffed the tenant 32. yeares paſt iudgement, &c. this barre ſhall be tryed, notwithſtanding this Statute, and notwithſtanding that the Plaintiffe had dyed.

Becauſe that this matter in fayt, and the writ and plaint is but a ſuppoſall.

Ceſſavit ſuppoſing the tenure by fealty, and two ſhillings rent, the tenant ſaid that *J.M.* whoſe eſtate the demaundant had in the ſigniory after the ancient limitation, and before the Stat. of Weſtm. 2. enfeoffed the prior of *D.* to hold in frankaliens, to hold by all ſervices by the deed, which he ſhewed, &c. whoſe eſtate he had in the land to hold quite for all ſervices, judgement, &c. this is a good barre, notwithſtanding the ſeiſin afterwards, and ſhall be tried, notwithſtanding the Statute 31. *E.* 3. *Fitz. Ceſſavit.* 22.

Avowry for ſuit of Court to every two Courts, and at the third to goe free, and alleaged ſeiſin, the Plaintiffe ſaid that he and two others held joyntly 3. acres of land of the defendant, by ſuit of Court, *Unde, &c.* & 60. years paſt the defendant brought a *Ceſſavit* againſt them, and he, & another after, and the third made a default, after default, wherefore the defendant received a third part, & had execution in ſeveralty, judgement, &c. this is a good bar, and it ſhall be tryed, notwithſtanding, that this

this is out of the limitation,

Becauſe the Lord cannot take the ſuit, and be contrary to the ſuit.

Aſſiſe of lands in D. they are at iſſue upon the ſeiſin, the aſſiſſe finde for the Plaintiffe, and thereby he recovereth, the tenant dieth, and his heire brings a *precipe* againſt the Plaintiffe in the aſſiſe of land in *D*. the Plaintiffe in the aſſiſe pleades the firſt recovery of the ſame lands in D. and averreth that all is one and the ſame land, the demaundant ſhall not be bound by the firſt tryall. 14. *E*. 3. *p*. 9.

A man recovers in a *precipe* in the Common pleas land in the Cinque-ports upon iſſue upon the ſeiſin, the tenant dyeth, his heire brings an action in the Cinque-ports of the ſame land, he ſhall be bound by the firſt tryall, 9. *H*. 7. 12. In the County Palatine a Commiſſion in Ayre iſſued, and after another Commiſſion in Ayre iſſued, who repealed the firſt, and *I*. *N*. recovered land upon iſſue, upon the ſeiſin before the firſt Commiſſioners, the tenant dyes, his heire ſhall be bound by this ſeiſin in an action brought before the laſt Commiſſioners,

Becauſe the firſt Commiſſion is not

determined before Proclamation, or notice given to the first Commissioners, 34.*E.*3.*p.*1.

A man recovers in banco, land which is in *Lancaster* upon issue upon the seisin, the tenant which lost, brought another action against the demandant at *Lancaster*, he shall not be bound by the first tryall. 9.*H.*7.12.

Because it was *coram non judice*, & *breve Rs. non currit.*

A man leaseth for life, a man brings a *precipe quod red.* of Rent against the tenant for life by covin, and recovers upon issue upon the seisin, the tenant for life dyeth, he in the reversion shall not be bound by this tryall,

Because a feint recovery shall be avoyded by the Statute of 32.*H.*8. and by this Statute the party and his heires shall be bound, and heir the reversion is not heire.

A Cessavit by tenant in tayle, they are at issue upon tryall of the seisin, which is found for the tenant, who hath judgement, the demandant dyeth, his issue shall not be barred by this tryall to make an avowry, or to have another Cessavit afterwards,

Be

Becauſe this is none of the actions which is ſpoken of in the Statute, and alſo the judgement is, that hee ſhall be barred of the land, and not of the ſeigniory, and upon a new Ceſſavit the heire may averre a Ceſſer, and the iſſue was upon a Ceſſer in the ſeignory, and the Statute ſpeakes of a ſeiſin of the thing demaunded, which is the land, and not the ſeigniory.

Dowre, they are at iſſue that the huſband was never ſeiſed, which is found againſt the demandant, by which ſhee is barred, her ſonne and heire of her and her husband brings a Mortdanceſter againſt the ſame tenant, he ſhall not be barred by the firſt tryall,

Becauſe the firſt judgement was onely of Dowre, and not of title, and the heire claimes as heire, and not as heire to the mother.

Lord meſne and tenant, the tenant holds by fealty and ſixpence, and the meſne by homage, fealty, eſcuage, and twelve-

twelve pence, the meaſne makes an avowry upon the tenant for fealty & ſixpence, and alleageth ſeiſin of the fealty and rent in his father, which is found and tried againſt him, and iudgement given by this tryall, the Lord may diſtraine the tenant, and make avowry for homage, fealty, and 12 d.

Becauſe the Statute ſaith, that by the tryall, the meaſne and his heires ſhall be barred of all avowries and claimes, therefore the menalty is gone, and the tenant ſhall hold of the Lord, which is his owne act, as a Releaſe, Foreiudger, and the like, and claime extends to all intereſts; *tamen quere*, becauſe it ſeemeth that hee ſhall not be barred, but onely in the action in which the tryall is.

Lord and tenant, the Lord avoweth, the Plaintiffe traverſeth the ſeiſin which is found for him, and he hath iudgement, and recovers dammages, the Lord cannot bring a *precipe quod reddat* of the ſame rent againſt the Plaintiffe,

Becauſe the Statute ſaith, that that ſhall be a barre of all avowries and

elaimes

claimes after, yet it ſeemeth that the the law is contrary, and that he ſhall be barred onely in his action.

Juris utrum paſſeth againſt the perſon upon the tryall of a ſeiſin, his ſucceſſor ſhall be barred by this tryall,

Becauſe within the equity of the Statute.

The

The seventh Lecture.

What Infants, Feme Coverts, and the like, shall have actions, and shall be aided by this Statute, &c.

Wo joyntenants have cause of a Writ of entry upon the ancient limitation, *tempore statuti*, whereas one was imprisoned *tempore statuti*, and after he which was imprisoned dieth, the other shall not have an action within sixe moneths upon the ancient limitation, notwithstanding this Statute,

Because the ancient limitation was expired at Ascention 1546. and he which survived was not imprisoned, and he is not heire to the other, and so not aided.

Two

Two parceners, of which one was a feme Covert before the Statute, had cauſe of action of two acres of land upon the ancient limitation *tempore ſtatuti*, , hee which was not covert dyeth without iſſue, the other ſhall not have an action upon the ancient limitation within the ſixe yeares to recover the two acres,

Becauſe ſhe was to have but a moity, and the other moity was bound in her ſiſter by her larches, becauſe ſhe and her heirs were bound, by reaſon that ſhe was not covert.

A man which had cauſe of action upon the ancient limitation, had iſſue, two ſons, and dyeth before the ſtatute, the eldeſt is profeſſed in *France* at the time of the ſtatute, and the youngeſt is within age at the time of the Statute, and after the eldeſt is deraigned and cometh backe out of *France*, there the yongeſt which commeth at full age, nor the eldeſt ſhall not have an action with the ſixe yeares upon the ancient limitation,

Becauſe the Statute doth not provide for thoſe which were beyond ſea, unleſſe they had cauſe of action at the time

time of the Statute, and a man in Religion had not cauſe of action at the time of the Statute, and the youngeſt cannot have it, becauſe yet he is not heire.

A feme covert had cauſe of action upon the ancient limitation at the time of the Statute, and after is divorced, after Aſcention, 1546. and doth not commence action within the ſix yeares, but the husband brings an Appeale within the ſix yeares, which depends 18. yeares, and afterwards the divorce is Repealed, the husband dyeth, the wife ſhall have an action upon the ancient limitation within other ſix yeares,

Becauſe while the Appeale is depending, the Eſpouſals ſhall not be determined.

A man impriſoned at the time of the Statute, had cauſe of action upon the ancient limitation, and after Aſcention, 1546. he goeth at large, and going to Weſt. for to purchaſe his Writ, is freſhly arreſted, and impriſoned by 7. yeares, and afterwards is inlarged, he ſhall not have an action upon the ancient limitat. within the 6. years after his enlargement,

Becauſe

Becauſe the 6. yeares ſhall be accompted from his firſt enlargement.

A feme covert at the time of the Statute had cauſe of action upon the ancient limitation, and after Aſcention 1546. after her a divorce is had, and the husband brings an Appeale, which continued 8. yeares, and is nonſuted in his Appeale, the wife ſhall have an action upon the ancient limitation within the ſix yeares after the nonſute,

Becauſe that depending, the Appeale it is taken in the ſpirituall Law, that the Eſpouſals are not diſcharged,

A Daughter within age, at the time of the Statute had cauſe of action, *Auncestral* to 4. Acres of Land upon the ancient limitation, and within one moneth after the Parliament another Daughter is borne, they ſhall not recover the foure Acres by an action after taken within the ſix yeares upon the ancient limitation, notwithſtanding this *proviſo* of the Stat.

A man of *non ſane* memory at the time of the Statute, or an Ideot, had cauſe of action, *Tempore Statuti*, and dyeth after Aſcention 1546. his heire ſhall never have an action, Be-

Becauſe he is not aided by the Statute, and the ancient limitation is expired.

A man which had cauſe of action upon the ancient limitation at the time of the Statute is excommunicated, and brought his action before Aſcention 1546. & is diſabled by the excomunication, and after Aſcention 1546. is abſolved, he ſhall well have his action upon the ancient limitation,

Becauſe the ancient Writ ſhall ſerve him, becauſe that ſhall not abate, but ſhall delay the plea, and ſhall be revived by Reſummons, and it was taken before Aſcention, &c. and therefore well.

A man which was an infant at the time of the Statute, and then having cauſe of action upon the ancient limitation, brought his action upon the ancient limitation, after Aſcention 1546. and within the ſix yeares and is nonſuited, or his Writ abateth by the plea of the tenant, and he brings another action within the ſixe yeares, he may declare upon the antient limitation,

Becauſe the Statute warrants all that which

which is within the ſixe yeares.

A feme Covert at the time of the Statute, had cauſe of action Auncestrall, upon the auncient limitation, and after Aſcention 1546. ſhe and her husband brought an action upon the auncient limitation within a yeere then following, &c. they ſhall not have an action, notwithſtanding this *proviſo* of the Statute,

Becauſe the wife is aided within the ſixe yeares, after diſcontinuance, but not the husband and wife, after Aſcention 1546. the coverture containing, becauſe the ancient limitation is expired.

A daughter within age at the time of the Statute, had cauſe of a Writ of Ayle, and after a ſon is borne, and enters, and dyeth without iſſue, the firſt Abator continueth his ſeiſin, the daughter ſhall not have an action againſt the Abator upon the Auncient limitation within the ſixe yeares, &c.

Becauſe by the entry of the ſon, the ancient action is determined, & ſhe may have an action upon the new limitation as heire to the ſonne.

A man which had cauſe of action upon

on the ancient limitation at the time of the Statute, dies within two dayes after the Statute, his heire within age, who comes to full age after Aſcenſion, 1546, he ſhall not have an action upon the ancient limitation within the 6. yeares,

Becauſe his father was not an Infant, nor impriſoned, nor beyond ſea at the time of the Statute, and ſo he is not ayded.

A man which was beyond ſea at the time of the making of the Statute, had cauſe of action upon the ancient limitation, and makes an Atturnie after Aſcenſion, 1546. who brought an action in the name of his Maſter upon the ancient limitation in abſence of his Maſter, the action doth not lie upon the ancient limitation,

Becauſe it is not given but within ſix yeares after his returne, and not after Aſcenſion, &c. and in his abſence, and now the ancient limitation is expired.

A man which had cauſe of action upon the ancient limitation at the time of the Statute, dyeth the next day after the Statute, his daughter and heire being

feme covert, the husband dies after Aſcenſion, 1546. ſhe ſhall not have an action within the 6. yeares upon the ancient limitation,

Becauſe ſhe had not cauſe of action at the time of the Statute, and her father was neither an infant, impriſoned, nor beyond the ſea at the time of the Statute, and ſo he is not aided.

A man which had cauſe of action upon the ancient limitation at the time of the Statute, dyeth one day after the Statute, his ſon beyond ſea, who returnes after Aſcenſion, 1546. the ſaid ſon ſhall not have an action within the ſixe yeares, upon the ancient limitation,

Becauſe he had not cauſe of action at the time of the Statute, and his father was not priviledged as an infant, and the like, at the time, &c.

Deane and Chapter have cauſe of action upon the ancient limitation at the time of the Statute, the Deane within age at the time, &c. The Deane and Chapter after Aſcenſion, 1546. ſhall not have an action within the ſixe yeares upon the ancient limitation,

Becauſe Infancy ſhall not ſerve in his capacity.

An Infant which had cauſe of action upon the Auncient limitation, takes a leaſe for three yeares, which continueth *tempore ſtatuti*, he within age, and after Aſcention 1546. he comes to full age, the terme expires, hee ſhall not have an action upont he Auncient limitation, within the ſix yeares,

Becauſe he had not cauſe of action at the time of the ſtatute, for it was not ſuſpended.

A woman is diſſeiſed of a Rent charge 40. yeeres before the Statute, by the Tenant of the land, the tenant makes a leaſe of the land to the woman for yeares, ſhe takes a husband, the Statute is made, and after the terme expires, and the husband dyes after Aſcention 1546. ſhe ſhall not have an action upon the Auncient limitation within the ſix yeares,

Becauſe it was ſuſpended at the time of the Statute, and therefore no cauſe of action at the time, &c.

Baron and feme have cauſe of action to xx. acres of land in the wives right upon the Auncient limitation, the huſband

band is impriſoned at the time of the Statute, the husband and wife ſhall not have an action within the ſix yeares upon the ancient limitation,

Becauſe the wife by whom the action accrueth was not impriſoned at the time, and ſhe by the coverture is not ayded by the Statute during the life of her husband. For the Statute ſpeakes of ſix yeares after diſcoverture, and the husband and wife are not one perſon, as to this purpoſe, becauſe ſhe ſhall not joyne in an action for the impriſonment of her husband.

Lord and Tenant by homage, fealty, and Rent, the Tenant leaſeth the land to one for terme of life, the remainder to *I. N.* in fee, the Lord is deſſeiſed of the Rent by Tenant for life 31. yeares before the Statute, he in the remainder dyeth without heir, eand the Lord is beyond ſeas at the time of the Statute, he ſhall not have an action of the Rent after Aſcention 1546. within the ſix yeares upon the auncient limitation,

Becauſe the ſeigniory was extinct by the excheat of the remainder, *tempo-*

re ſtatuti, and the ſeigniorie was in him, for a diſſeiſin of the Rent is not a diſſeiſin of the ſervice, and ſo no cauſe of action *tempore ſtatuti*.

Lord and Tenant, the tenant defeceth the Lord of his rents and ſervices, 32. yeares before the Statute, and after enfeoffeth the Lord, and *I.N.* of the Land, and maketh livery to *I.N.* and the Lord is impriſoned, *tempore ſtatuti*, who commeth at large after Aſcenſion, 1546. hee ſhall have an action upon the ancient limitation within the fixe yeares,

Becauſe the Livery was not made to the Lord, and the uſer of the action is a diſclaimer.

Two parceners which are within age at the time of the Statute, have cauſe of action auncestral upon the ancient limitation, one comes at full age within a moneth after Aſcenſion, 1546. and the other comes at full age 8. yeares after, &c. they may bring their action upon the ancient limitation within 6. years after the full age of the yongeſt, notwithſtanding that it be x. yeares after the full age of the eldeſt.

Becauſe that they are but one heire, and

and the age of the one ſhall ſtay the parcell for the other.

A daughter within age at the time of the Statute, had cauſe of an Aff. of Mortdanceſter upon the ancient limitation, as heire of her father, and after Aſcenſion, 1546. a ſon is born, and after he dyeth without iſſue, the daughter ſhall not have an action upon the ancient limitation within the 6. yeares,

Becauſe her action was once extinguiſhed by the birth of the ſon.

A Parſon of a Church had cauſe of an Aſſiſe *tempore ſtatuti* of a diſſeiſin, 32. yeares before, &c. and is impriſoned at the time of the Statute, and is depoſed, and another put in, and afterwards the new Parſon is depoſed, and the firſt is inducted Parſon againe, he ſhall not have an Aſſiſe upon the ancient limitation within the ſixe yeares,

Becauſe that albeit that an Aſſiſe may revive, as in caſe where a diſcent is had, and after the Land diſcends to the diſſeiſor, &c. and outlawry, and the like, &c. yet that is upon the ancient title which remaines in the plaintife, but in this caſe the title was gone by the deprivation, and he is now Parſon by the new preſentation, and ſo a new title, and his firſt charge, leaſe and graunt are determined.

Alienee purchaſeth land, and is diſſeiſed 33. yeares before the Statute, and is beyond the ſea at the time of the Statute, and after the King makes him denizen, and he commeth backe, he ſhall not have an Aſſiſe upon the ancient limitation within the ſixe yeares, by this *proviſo* of the Statute,

Becauſe he had not cauſe of an Aſſiſe at the time, &c. for that he was an Alien, and an Alien borne is not to enjoy an action as a ſubject.

A man takes his Neiſe to wife, *I. N.* enfeoffeth the husband and wife in fee, the husband dieth, the wife enters and is ouſted by the heire of her husband who is deſſeiſed by *I.S.* 3. yeares before the Statute, and the woman and the heire of the husband are beyond ſea at the time of the Statute, the heire ſhall have an action upon the ancient limitation, within the ſixe yeares, and not the wife,

Becauſe it is no enfranchiſement by *Nat.brev.* for the wife ſhall not have dowre in that caſe, and therefore the heire may enter in the land purchaſed by his villaine, and ſo the action to him.

The

The eighth Lecture.

What causes are sufficient causes of action vested in in such persons at the time of the Statute to have an action upon the Auncient limitation within the sixe yeares, and to take advantage of the sixe yeares, and which not.

IF the King gives land of the suppression of 27. *H.* 8. to *I. S.* in fee, which was holden by the Abbey of *D.* of *I. S.* by fealty and xx.s. Rent, *I. N.* distraines for the Rent, *I. S.* makes a rescous, 32. years passe the Statute commeth, *I. N.* beyond Sea, he had cause of action for the Rent by this branch of the Statute, to have advantage of the sixe yeares.

Because the act reserves Rents and services to strangers, but otherwise it is where the King is entituled by double matter of record, as for forfeits for treason, and office found, or by

by office found for not doing of their duty, for in those cases, if the act of Parliament give that to the King, saving titles of estrangers, as if no such act had been made, that would not serve, because if no such act had been, the seisin of the King, by matter of Record, extinguisheth all seigniories, but the words of the act of the 1. suppression are [saving to all estrangers, their titles, as if the Abbe had been living, *nota diver si tat.*

A man is attainted of Treason by Act of Parliament, and after the heire is restored in as high a manner, as if no such attainder had been, the Lord distraines for his Rent, and rescous is made 32. yeares past, the statute comes, the Lord is imprisoned, he had good cause of action for the Rent to have advantage of the *6.* yeares.

Because all is revived, as in the case of a condition, &c.

A man holds of his sonne by 3.s. and dieth, the sonne enters, by which the seigniory is extinct, and endoweth his mother of the third part of the land, the Statute commeth, the sonne beyond

yond Sea, he hath cause of action of the third part of the Rent, within the 6. yeares upon the ancient limitation, if he be debtor.

34. *E.* 3. 15. that the wife is in by the husband, and the seigniory was determined by the act of the Law, and not by the act of the Lord as a purchase, & therefore she shall be attendant for the third part of the Rent.

What causes of action shall serve those which were infants and covert, and the like, *tempore statuti*, & what not? The eight Article of the Statute.

A man gives land in tayle, reserving Rent, & dieth, his wife is endowed of the Rent, the tenant in taile dieth without issue, the heire of the dower enters, and defeceth the wife of the Rent, 52. years before the Statute, and she is beyond sea at the time of the Statute, she hath not cause of action upon the ancient limitation, to use it within the sixe yeeres, &c. 10. *E.* 3.

A woman seised of certain land, takes a husband, and after the husband, enters in religion, the wife aliens in fee, & after the husband is dereigned before the stat. of desolutions, & enters, & is ousted by the alienee

alienee 52. yeares before this Statute of limitations, and is imprisoned at the time of the Statute, he had good cause of action to use within sixe yeares upon the Auncient limitation, 33.*E.*3. *Tit.entre.*

A man seised in fee, takes a wife, the Lord of the land grants the seigniory to the wife and her husband in fee, and the husband dies, she accepts homage of the Tenant 52. yeares before the Statute, and is beyond Sea at the time of the Statute, she had not cause to have a writ of dowre upon the Land within the sixe yeares upon the Anncient limitation,

Because she had accepted the seigniory, & she shall not have both, 11.*E.*3.

Land is given by Fine to one for life, the remainder to one which was baptized by the name of *John* in fee, and after hee in the remainder is confirmed by the name of *William*, the Tenant for life dyeth, an estranger enters 52. yeeres before the Statute, hee in the remainder is imprisoned at the time of the statute, this is not sufficient cause of action to have a *Scire facias* within the sixe yeares upon the auncient limitation,

12.*R.*2. contrary upon a purchase executed.

A man leaſeth for life, and Tenant for life leaſeth for anothers life, upon condition, & enters for the condition broken, he in the reverſion enters 32. yeares before this ſtatute, the Tenant for life impriſoned, *tempore ſtatuti*, he had not cauſe of action to enjoy the auncient limitation within the ſix yeares,

Becauſe a forfeiture ſhall not revive.

A man who was beyond Sea at the time of the ſtatute, and had cauſe of action, &c. comes to dowre, and incontinent, the King ſends him backe to warre in *France*, who continueth there ſeven yeares in a fortreſſe, and commeth back, he ſhall not have his action within the ſix yeares, nor otherwiſe.

A man ſeiſed in right of his wife, aliens Mortmaine, the Lord enters, the husband dyeth 52. yeares before this ſtatute, the wife is beyond ſea, *tempore ſtatuti, &c.* the wife had good cauſe of action to recover the Land within the ſix yeares of his returne, upon the auncient limitation.

The Lord diſſeiſeth his Tenant, and makes a feoffment in fee upon condition, and re-enters for the condition broken, the Tenant enters upon him, and reſcouſ-

eth

seth a distresse 30. yeares before this Statute, the Lord is imprisoned at the time of the Statute, he had not cause of action, nor to avow for the Rent, nor seigniory upon the antient limitation within the sixe yeares of his enlargement,

Because the Rent and seigniory were extinct before and cannot be revived by the condition.

An Alienee hath issue a sonne, and is made denizen, and purchazeth Land, and hath issue another sonne, and dieth, the youngest sonne entreth, the eldest doth oust him 32. yeares before this Statute, the youngest is imprisoned at the time of the Statute, he hath good cause of action to use it within sixe yeares upon the ancient limitation,

Because he was not inheritable before his father was Denizen, as the son of a villaine borne after the enfranchisment is free, but contrary, of him which was borne before, &c.

Grandfather and son, the Grandfather dies seised, *I.H.* abates, the son disseiseth him, the father dies 33. yeares before this Statute, *I. H.* hath not cause of action to use it within 6. yeares upon the ancient limitation,

Because

Becauſe the diſcent of the right of the Father to the ſonne doth remit him.

A man leaſeth land for life, the tenant for life is diſſeiſed, an anceſter collaterall of the tenant for life releaſeth with warrantty, and dieth without iſſue 32. yeares paſt, the Statute is made, the tenant for life beyond the ſea, he had not cauſe of action to enjoy the ſixe yeares by this branch of the Statute, 15. *H.* 7.

Tenant in tayle diſcontinueth, and retaketh in fee, and grants a Rent charge, and makes a feoffment upon condition, the grantee is defeced of the Rent, the tenant in taile had iſſue, and dieth, the heire enters for the condition broken, the grantee is impriſoned, &c. hee had good cauſe of action for the Rent by this branch, &c.

Becauſe the heire is not remitted for that that he entred at full age, contrary of ſuch an entry for a condition within age, 8. *H.* 7.

Grandfather, Father, and Son, the grandfather is ſeiſed of certaine land with common appurtenance, and is diſſeiſed of the Common, & brings an aſſeiſe, and is nonſuited, & enfeoffeth the father of the land with the appurt. & dieth, the father dieth

52. yeares before this ſtatute, the ſonne within age at the time of the Statute, no cauſe of action is to the ſonne to have an action within the ſix yeares, 4.*E.*3.

A man made a feoffment in fee to a woman, upon condition, that if he marry her, that it ſhall be lawful to him to enter, and he marrieth him, and aliens, and dyeth 52. yeares before the ſtatute, the wife is beyond ſea at the time of the Statute, ſhe had cauſe of action, by a *Cui in vita*, to uſe it within the ſix yeares, 5. *E.*2.

Becauſe he was ſeiſed in right of his wife before, and he could not enter upon himſelfe.

The

The nineth Lecture.

Becauſe the Statute in the ninth Article is, That if thoſe which were Infants *Fem. Coverts* and the like, die within age Covert, &c. no judgement or Determination had of ſuch Titles, Actions or Rights, that their next heir or heirs ſhall have like liberty and advantage within the ſixe yeers next after the death of the Aunceſter, as the Aunceſter might have had within the ſixe yeers, &c.

It is therefore at this time to be ſeen, what judgements ſhall make a Determination of the Action in ſuch Caſes, and e contra; and what Perſons ſhall be aided by this branch, and what not.

A Man brought a Writ of Mortdaunceſtor, after Aſcention, 1546. upon the Auntient Limitation, and within the ſixe yeers, &c. becauſe that he was an Infant, *tempore ſtatuti*: the Tenant pleads *darrain ſeiſin* in the Demaundant judgement, &c. the Demaundant pleads an Eſtoppel, which is adjudged againſt him in another Terme, by which

judgement is given, &c. the Demaundant dieth, this judgement is a good determination of this action against the Heire, to have such action within another sixe yeers.

Because albeit he be not party to the Writ, and to all actions, yet he is barred as to this action, because the Heir may have a writ of cousinage or besaile, and not a writ of Aile, because he is not within the degree, &c. and the writ shall say, *de quo, I. H. proavus suus fuit seisitus die quo obiit, &c.*

He which was an infant, *tempore statuti*, brought a Formedon after Ascention, &c. and within the 6. yeers, &c. upon the antient limitation, & is nonsuited, & iudgement is given upon that, and he dieth, his issue shall have another formedon within another 6. yeers upon the the antient limitation, notwithstanding this Statute.

Because this is no determination of the action, nor bayle, but the heire shall have another Formedon, and so is the intent of the Statute, *ut patet*, by another clause of the Statute.

A

A man which was impriſoned, *tempore ſtatuti*, brings a writ of Right upon a diſclaymer againſt his Tenant, which had diſclaimed, the Tenant pleads *Faux latin* to the writ, by which the writ abates by judgement; the demandant dies within the 6. yeers, his heire ſhall not have another 6. yeeres to bring his action in upon the antient limitation.

Becauſe the heir ſhall not have droyt ſur diſclaymer, by the diſclaymer to his father. 22, p. 6.

He who was beyond ſea at the time of the Statute, brings a writ of entry in the *per*, upon the antient limitation after aſcention, &c. the writ abates by judgement by the death of the Tenant, his heir entred, and the demandant dieth within the 6. yeers, this judgement is a good determination of this action againſt the heir, ſo that he ſhall not have ſuch another action within another 6. yeeres.

Becauſe he ſhall have that in the *Per* and *cui*, and not in the *per*.

A *precipe* upon the antient limitation after Aſcention, by a Fem. which was covert at the time of the Stat. and within 6. yeers the tenant pleads excommuni-

cation in the Demandant, which is adiudged for a good plea, the demandant dieth within the 6. yeeres, his heire ſhall have an action upon the antient limitation within another 6. yeeres, notwithſtanding this Iudgement.

Becauſe it is but a demurrer of the *parol*, which is not peremptory.

A woman which was covert, *tempore ſtatuti*, brings a Formedon in remainder upon the antient limitation after Aſcention, &c. within the ſixe yeeres, the tenant demands oyer of the deed of remainder, and demurreth for the not ſhewing of it, which demurrer is adiudged againſt the demandant, and hee dieth within the 6. yeeres, the Heire ſhall not have another Formedon within another 6. yeeres.

Becauſe this iudgement is a bar at the time of the monſtration. *Fitz.* 19. 2,3. 172 & 7 *H.* 6. 19. and the iudgement is, that the demandant ſhall take nothing by this writ.

A writ of Entry in the *quibus* is brought by the heir againſt a *termor*, which doeth nothing, and againſt another, which pleads *non diſſeiſivit*, the termor is acquited,

ted, and the other is found guilty, the Plaintiffe recovers, this is a good determination againſt the Termor, ſo that he nor his Executors ſhall not have an action, nor remedy, notwithſtanding that he had a good Title to the terme, and the Plaintiffe no title to the land.

A man which was impriſoned at the time of the Statute, brings an Aſsiſe after Aſcention, &c. and within the 6. yeers, upon the antient limitation, the Tenant voucheth another Record of Aſsiſe, brought by the Plaintife againſt him, in which he was barred, the Plaintife pleads *nul. tiel Record*, and a Record is certified, brought againſt the Demandant, and his wife, by which Iudgement is given againſt the Plaintife, who dies within the 6. yeers, this Iudgement is a good determination, ſo that the heir ſhall not have an action within other 6. yeers.

Becauſe it is a good bar, and no fayler of Record.

Heir in Tayl, which was within age at the time of the Statute, brought a writ of Right after Aſcention, &c. upon the antient limitation, and within the 6. yeers. and he and the tenant ioynes the miſe

upon the meer *droyt*, and after the Demandant made default, by which iudgement finall is given, and he dies within the 6. yeeres, there the heir ſhall have an Action within other 6. yeeres, notwithſtanding this iudgement.

For he ſhall have a formedon, becauſe the default was the act of the father, which ſhall not preiudice the Iſſue in tayle by the Statute of *Weſtm.* 2.

A man which was beyond ſea at the time of the Statute, brings a writ of right after Aſcention, upon the antient limitation, and within the 6. yeeres the Tenant tenders the half-mark for to enquire of the ſeiſin, which is found for him, and iudgement finall is given, the Demandant dies within 6. yeers; this is not a good iudgement to *ouſt* the *heir*, to have an action within another 6. yeers.

Becauſe he may reverſe that by error, 34. *E.* 3. *tit. Iudgement. Fitz.* 2 *E.* 6. and the enquiry of the ſeiſin was no Iſſue, and therefore is cleere by the Statute of Ieofayles.

Tenant in tayle, which was impriſoned *tempore ſtatuti*, brings a writ of *Nativo habendo*, of a villain regardant after Aſcen-

Aſcention, &c. and within the 6. yeers upon the antient limitation, the Defendant pleads Frank &c. and gives an enfranchiſement by the Plaintife by deed in evidence, the Iurie poſſeſſeth for him, the Plaintife is barred by iudgement, and dies within the 6. yeeres; this is no determination againſt the heir, to have another Action within another ſixe yeeres.

Becauſe the iſſue was true, but now the iſſue in tayle may confeſſe and avoid this iudgement. 12. E. 4.

He which was impriſoned at the time of the Statute, had cauſe of Attaint upon the antient limitation, and brings that within the 6. yeeres, and after is nonſuited at the firſt day, and dieth; this is no determination againſt the heir, but that he may have an attaint within another 6. yeeres.

Becauſe the non-ſuit is not peremptory, but where it is taken after 32. E. 3.

A Quere in P. the Plaintife declares, the defendant makes his bar, the Plaintife is nonſuit, this is a good determination againſt the Plaintife, ſo that he ſhall

not have another Quere in *P.*

Becauſe the non-ſuit after appearance is peremptory. 19.*E.*4.

A man that was beyond ſea at the time of the Statute, brings a writ of right cloſe after Aſcention, &c. and within the ſixe yeeres, upon the antient limitation, in Auntient Demeane, where the Lord had confirmed the ſtate of the tenant before by Deed indented, to hold by leſſer ſervices, the tenant pleads a plea which is found for him, the demandant is barred by iudgement, and dieth within the ſixe yeeres, this is a good determination of the Action for ever, ſo that the heir ſhall not have an Action within other ſixe yeeres.

Becauſe a Confirmation doth not make a Frank Fee, becauſe no alteration of poſſeſsion, contrary of a Fine or feoffment.

Two Parteners, one releaſeth to the other, One brought a Precipe againſt both, hee who releaſed made default, the other appears, and prayes the view, and will not take the intire tenancy, the Demandant records the moietie of him which did not appeare by default, and after

ter is non-ſuit, and had execution of the moiety, hee which loſt is impriſoned at the time of the Statute, and brings an Aſſiſe after Aſcention, &c. and within the 6. yeares, againſt him which recorded upon the antient limitation, and dies within the ſixe yeeres; this iudgement aforeſaid is not a determination againſt the heir, to bring a writ of Entry in the *quibus*, or another Action within other 6. yeeres. 22. *E.* 6.

Becauſe a Recovery againſt him who had nothing, is of no validity, &c. nor ſhall not binde him.

A man which was an infant at the time of the Statute, makes a plaint of Mordauncestor without an original before the Iuſtices of Aſsiſe, upon the antient limitation after Aſcention, &c. and within the 6. yeers, the tenant pleads in bar, which is found for him, and had iudgement againſt the Plaintife, the Plaintife dies within the 6. yeeres, this iudgement is no determination againſt the heir, to ouſt him of an Action within 6. other yeares.

For it is void, and *coram non judice*, otherwiſe if the triall had been in *banco*.

A

A man which was impriſoned at the time of the Statute, brings a *Cui in vita in banco*, upon the antient limitation after Aſcention, &c. and within the 6. yeeres, the tenant appears and pleads, and barres the Demandant by demurre, by which iudgement is given, this iudgement ſhall be a determination againſt the heir, to bring another action.

Becauſe it is not voide but error, becauſe this court had authoritie; contrary of Iuſtices of Aſsiſe, without a writ and patent of Aſsiſe; for the others have a generall commiſſion.

A man which was beyond ſea at the time of the Statute, brings an Aſſ. after Aſcention, 1546. upon the antient limitation, and within the 6. yeeres which remained, &c. one of the Juſtices dieth, and the Plaintife is aſſociated to the other Iuſtice, and iudgement is given againſt the Plaintife at the next Seſsions upon iſſue tried, and he dies within the 6. yeeres, this is a determination againſt the heir for ever, ſo that he ſhall never have action within the 6. yeers, nor otherwiſe.

Becauſe now it is not error by reaſon o' the Statute of Ieofayles, and it may be that there we.e two perſons notwithſtanding the wards of the Record.

He which was an Infant *tempore ſtatu-ti*, brings a formedon after Aſcention, and within the *6.* yeeres after, upon the antient limitation againſt tenant for life, who diſclaimeth, the demandant hath iudgement, and enters, and the tenant for life dieth, he in the reverſion enters upon the demandant, and the demandant dies within the *6.* yeers, this Iudgem. and execution thereupon, is not a determination againſt the heir in tayle, but that he may have another action againſt him in the reverſion, within the other ſixe yeeres.

Becauſe upon the diſclaymer the iudgment is no other but that the writ ſhall abate, and the demandant to enter in at his perill, which doth not binde him in the reverſion; contrary of a Recovery againſt tenant for life, note the difference, 36. *H.6. f.* 30.

A man leaſeth land for another mans life,

life, and grants the reversion over the tenant *Aff.* and *aliens* in fee, hee in the reversion is beyond sea, *tempore statuti*, &c. and there dies, his heire shall not have a writ of Entrie, *ad terminum qui preteriit*, within the 6. yeeres.

Because it doth not lie, but for the first lessor, and his heirs.

A Parson of a parish was imprisoned *tempore statuti*, and brings a *Imcis utrum* after Ascention, &c. upon the antient limitation within the 6. yeeres, which was adiudged against him upon a demurrer upon a plea pleaded to the writ, and he dies within the 6. yeers, this is no determination against the successor, but that he may have another action within the 6. yeeres, notwithstanding that the statute speaks of heirs only.

Because he is within the equitie of the Statute.

A Commission of Eyre issueth in the County of *D.* one which was an infant *tempore statuti*, brings an Assise before them after Ascention, &c. upon the antient limitation within the 6. yeeres, and depending that the Court of *Kings bench* commeth into the same County, and

proclaimes the peace, and after the Tenant barres the Plaintife by demur upon the title, the Plaintife dieth within the 6. yeers, this is no good iudgement againſt the heir, to bring an Action within another 6. yeeres.

Becauſe the iudgement is voide by the comming of the Kings Bench, and making of Proclamation, or error at the leaſt.

A *Stativo habendo* brought by a man which was beyond ſea at the time of the Statute, and after Aſcention, &c. and upon the antient limitation, within the ſixe yeares, the Plaintife declares, and is non-ſuited, and iudgement is given upon that, and the Plaintife dieth within the ſixe yeeres; this is a determination againſt the heir, ſo that he ſhall have no other action within other ſixe yeeres.

Becauſe the non-ſuit is peremptory in *favorem libertatis*.

He which was an infant *tempore ſtatuti*, brought a Ceſſavit upon the antient limitation after Aſcention, &c. and within the ſixe yeeres, the Tenant pleads falſe Latine to the writ, by which the writ abates by iudgement upon demurrer, the

deman-

demandant dieth within 6. yeeres, this is a good determination, ſo that the heire ſhall have an Action of that within other 6 yeeres.

Becauſe he ſhall not have a Ceſſavit of a Ceſſer in his fathers time.

A Woman which was covert at the time of the Statute, brings a Precipe in *banco*, upon the antient limitation, after Aſcention, &c. and within ſixe yeers, of land in the County Palatine of *Durham*, the tenant pleads a barre, the demandant demurres, and is barred by iudgement, and dieth within the 6. yeeres; this is no determination to ouſt the heir of an action within other 6. yeeres.

Becauſe this is a void iudgement, and *coram non iudice*: contrary in the Cinque Ports, and auntient dem.

The husband diſcontinueth the right of his wife, and dies, the Feoffee ceaſeth, the lord records by a Ceſſav. the wife beyond ſea at the time of the Statute, the wife dies within the 6. yeeres; this iudgement is no determination againſt the heir, but that he may have another action within another 6. yeeres.

Becauſe his title is before the Ceſſer, for

for albeit the Recovery in the Ceſſavit againſt the husband and wife, ſhall binde, yet otherwiſe it is, when the wife is not party.

A Precipe by a man which was beyond ſea at the time of the Statute, brought within the *6.* yeers, the Bailiffes of *D.* demand conuſance and ouſted of it by reaſon of failee of right, and they demand cogniſance againe, and traverſe the failer of right, and the Demandant alſo, and the Tenant joyneth in iſſue to the Bailifes, and the iſſue is found againſt the Bailiffes, by which judgement is given, the demand dieth, this judgement is a determination to the heir, ſo that hee need not have another action within other *6.* yeeres.

Becauſe the tenant had loſt the land, and the heir may enter if he will.

The

The tenth Lecture.

Of *Determinations* in fait.

What matters, and what things ſhall be ſaid good Determinations of Titles and Rights of Infants, Fem. Coverts and the like, at the time of the ſtatute, ſo that if they die within the 6. yeers, their heires ſhall not have advantage of another ſixe yeeres.

IN. had cauſe of Action upon the antient limitation againſt a villain, and is beyond ſea, *tempore ſtatuti*, and returneth, An auncеſter collateral of *I. N.* releaſeth to the villain, with warranty, the Lord of the villain enters, the auncеſter collaterall dies without iſſue, *J. N.* dieth within the 6. yeeres, this is no Determination

nation to hinder the heire, *I. N.* to have an action within another 6. yeeres.

Becauſe the warranty is not deſcended upon the poſſeſſion of him to whom it was made, 22. Aſſ.

He which was an Infant *tempore ſtatuti*, and had cauſe of action to a Rentcharge upon the antient limitation, out of Ten acres of land, enters into one acre at full age, and enfeoffeth an eſtrainger, and dieth within the 6. yeeres, the Tenant reenters, the intereſt of the heir is gone to have an action within the other 6. yeeres.

Becauſe a diſcharge of one acre by a tertious entrie, is a diſcharge of all, as by a purchaſe of one acre, becauſe there cannot be an apportionment, and notwithſtanding, that he would enter as heir, yet if the diſſeiſee would would not re-enter upon him, the rent ſhall not revive.

A man which was an infant *tempore ſtatuti*, had cauſe of action upon the antient limitation for common, out of twenty acres of land, the tenant of the ſoyle enfeoffeth the infant of the land *unde*, &c. upon condition, the infant enfeoffeth a

l ſtran-

ſtranger, and dieth within the 6. yeeres, the feoffer enters for the condition broken, the title of the heir is not determined.

Becauſe of the infancy at the time of the feoffment, and the regreſſe of the feoffer revives all.

He which was an Infant at the time of the Statute, had cauſe of action upon the antient limitation to a Rent charge, the tenant of the ſoile deviſeth the land to the infant for to ſell, according to the cuſtome, &c. the infant comes of full age, and ſells, and dieth within the 6. yeeres, the title of the Rent is not determined, but that his heir ſhall have remedy within another 6. yeeres.

Becauſe the land, out of which the Rent was iſſuing, paſſed by the will of the deviſor, and not by the infant which ſold.

Lord and tenant of 4. acres by foure pence Rent, the Lord is diſſeiſed of the Rent by the tenant 33. yeeres before the Statute, he being impriſoned at the time of the Statute, and afterwards releaſeth to the tenant all his right in one of the acres, and had iſſue, and dieth with-

within 6. yeeres, the intereſt of the heir in the rent is not determined to have an action within the other 6. yeeres.

Becauſe it is but for part, as a purchaſe of one acre, &c.

Lord and tenant, the tenant is diſſeiſed 60. yeeres paſt, and is beyond ſea at the time of the Statute, and returnes, and is utlawed of felony by erroneous proceſſe, and dieth within the 6. yeeres, the Lord enters, the heir reverſeth the utlary by error, this action, nor title to the land is not determined to have remedie within 6. other yeeres.

Becauſe the reverſing of the utlary *ab initio*, reverſeth the title of the land.

A man which was impriſoned at the time of the Statute, had cauſe of a *formedon* upon the antient limitation, upon an alienation with warranty, and dieth within the 6. yeeres, and had aſſetts deſcended, which aſſetts was impaired by drowning in the time of the anceſtor, the title of the heir is not determined to have an action within the other 6. yeeres.

Becauſe it is not aſſetts the day of the writ purchaſed. 4 *E.* 3. *contr.* by *Thiop.*

A man which had title of action upon the antient limitation, hath issue two sons and dieth, the eldest in religion before the Statute of 31. *H.* 8. the youngest brings an action for the land, and leeseth by false verdict, the eldest is derained, and he and the youngest are imprisoned at the time of the Statute, and the youngest dieth within the 6. yeeres, the title of the eldest is determined to have an action or an entry within other 6. yeers.

Because the youngest was barred as heir, and none may have an attaint but the heir of the youngest, and the verdict bindes the title.

A man makes a feoffment in fee, upon condition the feoffee is disseised, and imprisoned *tempore statuti*, the feoffer had issue a daughter, and dieth, his wife *privement enseint*, the daughter enters for the condition broken, the feoffee dieth within the 6. yeeres, and a son is borne of the wife of the feoffer, the heir of the feoffee, nor the son shall not have remedy within the other 6. yeeres.

Because this is as a purchase to the daughter, *tempore statuti*.

A man seised of two acres of land in

two

two villages in one County, is diſſeiſed by another, that is to ſay, of one acre at one time, and of another acre at another time, the diſſeiſor of *non ſane* memory, makes a feoffment of one acre, and is impriſoned *tempore ſtatuti*, and dieth within the ſixe yeeres, the diſſeiſee enters into the other acre, of which no feoffment was made in the name of both, the title of the heire of the diſſeiſor is determined for both acres, to have remedy within ſixe other yeeres.

Becauſe the entry into one acre in the name of two, is good againſt the ſame perſon, contrary againſt two ſeverall diſſeiſors.

A man ſeiſed of two acres enfeoffeth one of 1. acre upon conditiõ, & enfeoffeth another of another acre upon another condition, the firſt feoffee within age, enfeoffeth a ſtranger in that acre, & is within age at the time of the Statute, and dieth within the ſixe yeers, the conditions are broken, the firſt feoffer enters in the other acre, in the hands of him which did not make the feoffment in name of both acres, the title of the heir of the infant is not determined by this entry.

Becauſe the entry upon the feoffee in name of both ſhall not ſerve againſt the feoffee, and therefore remedy for one acre.

A diſſeiſor makes a gift in tayle, the reverſion in fee, the tenant in taile had iſſue and dieth, the iſſue enters and dieth without iſſue, hee in the remainder enters, the diſſeiſee is impriſoned at the time of the Statute, within the *6.* yeeres, the title of entry of his heir is not determined to enter within ſixe other yeeres.

Becauſe by the death of tenant in tayl without iſſue the deſcent is gone, and ſo the title of entry for the heir is revived.

A Parſon makes a Leaſe for life, and dieth, his ſucceſſor is beyond ſea at the time of the Statute, and after dieth, his ſucceſſor taketh fealty of the Leſſor, his title is determined to take benefit within the other ſixe yeeres.

Becauſe this acceptance is a receipt of Rent.

A man which was impriſoned at the time of the Statute, and had cauſe of action, *ut ſupra*, &c. is enlarged after aſcenſion, &c. and delivers a Releaſe, as an

an Eſcrow to *I. N.* upon certain conditions to be performed, to deliver it to the terr tenant, as his Deed, and before the day, hee is of *non ſane memory*, and after the conditions are performed, and *I. N.* delivers the Deed and the Feoffor dies within the ſixe yeeres, this is a good Determination of the right, ſo that the heir ſhall not have an action within other ſixe yeers.

Becauſe that had relation to the commandment, &c.

A man enſeoffed *I. N.* upon condition that he ſhould enfeoffe a woman, and he enfeoffed the woman and her husband to them and the heirs of the wife, and after the husband diſcontinueth, the Statute commeth, the husband dieth, the wife dieth within the ſixe yeeres, the firſt feoffor enters, the title of the heir of the wife is determined to have remedy within the other 6. yeeres.

Becauſe by the miſexecuting of the ſtate to the husband and wife, which ſhould have been onely to the wife, the condition is broken.

The eleventh Lecture.

For that the Statute saith, That if any person taketh any of the said Actions, Auditories, Scire facias, Prescriptions, Titles or claimes, before Ascension, 1546. which abateth by the death of any partie, no Judgement or Determination being had, that the party which liveth, or his heir shall have a new action, &c. within a yeere after such writ or suit abated, and shall have such advantages within that yeer, as at the common Law, and the Eighth Article within 6. yeeres likewise.

It is to be seen, where such persons may declare upon the Ancient Limitation, and e contra, and what advantages they shall have, and e contra.

TWo Parcenors, Heirs in tayle, bring a Formedon upon the antient limitation, before Ascensi. 1546. one dies without Issue, after Ascension, &c. the other prayeth leave to have another writ, and brings that freshly against the first Tenant within

in the yeere, who pleads non tenure, the Demandant avers him Tenant the day of the first Writ, and shall have advantage to have this amercement for the land first in demand.

Becauſe ſhe claimes as heir of her father, and not as heir of the ſiſter.

Two parcenors are diſſeiſed 32. yeers before the ſtatute, and brings a writ of Entre in the nature of an Aſsiſe before Aſcenſion, 1546. and one dieth without iſſue, after Aſcenſion, the other prayeth leave to have another writ, and brought that freſhly againſt the ſame tenant within a yeer, &c. for the ſame land, who pleads non tenure, the Demandant avers him Tenant, the day of their firſt writ, ſhee ſhall not have advantage to have this averment.

Becauſe it cannot be by anothers, but by the ſame title of the ſame action, and here ſhe claimes a moiety by her ſiſter.

Two Infants are deſſeiſed 33. yeeres before the ſtatute, and brought a writ of entry, in the nature of an Aſsiſe before Aſcenſion, 1546. and one dieth after aſcenſion, &c. and the tenant alſo, and his

his heir is in by descent, the other brings a writ of entry in the *per*, within the yeer, and the heir of the Tenant is essoined, and after had the view by Attourney, and after his Attour. is essoined upon the view there at the day, the Demandant cannot declare upon the ancient Limitation, notwithstanding this Statute.

Because the yeere is past, and therefore this article is little worth.

A man brings a Precipe upon the antient Limitation, before ascention, 1546. the tenant tenders his law of *non summons*, and performes that after ascention, &c. by which the Writ abates, and he brings a new within the yeer, by journeys, accounts, &c. hee shall not have advantage to declare upon the ancient limitation.

Because that is expired, and the Statute doth not warrant no abatement but by death.

A man brought a Precipe upon the antient limitation before ascension, the writ is abated by false Latin after ascention, &c. the Demandant prayeth to have another writ, and taketh it freshly by jour-

journeys, accounts within the yeer, &c. the tenant pleads non-tenure, the demandant ſhall not have advantage to aver him tenant the day of the firſt writ by journeys, accounts, &c.

Becauſe the firſt writ did not abate by death, and the averment proves, that he took the writ upon the antient title, where the antient limitation is determined, and therefore without the caſe of the ſtatute.

A man brought a Precipe before Aſcention, &c. upon the antient limitation, the writ is abated by Jointenancy after aſcention, &c. the Demandant takes a new writ by journeys, accounts, &c. within the yeer againſt both, the tenant pleads Non tenure, the Demandant avers them tenants *die primi brevis*, he ſhall not have advantage of this averment.

Becauſe the writ doth not abate by death, and a writ by journeys, accounts, doth not lie againſt him which was not party to the firſt writ, nor by conſtruction againſt his companion which was party.

Two infants bring an Aſsiſe upon the antient limitation before Aſcention, &c.

and

and after Aſcenſion, the Aſsiſe abateth by death of one of the Plaintifes, the other may have another Aſsiſe within the yeer freſhly, and ſhall have advantage to recover the entire coſts of the firſt ſuit.

Becauſe it is by journeys, accounts, &c.

He which was impriſoned at the time of the ſtatute, having cauſe of action, &c. and brings an action within the yeere, within the end of the ſixe yeeres, according to the ſtatute, the tenant is eſſoined, and after had the view, and his atturney is eſſoined upon the view, there the Demandant cannot declare upon the antient limitation, notwithſtanding the eighth and nineth article of the ſtatute.

Becauſe the ſixe yeeres are paſt.

A Precipe, *quod reddat*, brought by one againſt two before aſcenſion, &c. upon the antient limitation, one of the tenants dies after aſcenſion, &c. *ſc. termino Trin.* and judgement is given, that the writ ſhall abate in the terme of Saint *Mich.* next following, &c. and the demandant brings another writ, which bears teſte a yeer and two moneths after the death of the tenant, and within the yeer of the judge-

judgement, he ſhall not have advantage to declare upon the antient limitation, 21 *E.* 3.

Becauſe the ſtatute is (within the yeer after the writ abates) and it is in truth abated by the death, and the judgment ſhall have relation to the death, contrariwiſe upon another abatement; note the diverſitie.

A man recovers his warranty, *pro loco & tempore, in a warantia charte* before aſcenſion, &c. *quia timet implacitari*, and after leeſeth in a Precipe or aſſiſe, and after aſcenſion brings a *Scire facias*, within the yeere, to have in value, he ſhall not have advantage to have in value, upon the firſt indictment.

Becauſe he ought to have vouched, or to have given notice in the firſt ſuit.

A man brought a Precipe before aſcenſion, &c. upon the antient limitation, which abates after aſcenſion, &c. by death of the tenant, and the Demandant brought another Precipe halfe a yeere within the yeere, the tenant caſts a protection, which is allowed, and after the yeere, the demandant brings a Reſummons

mons, he ſhall not have advantage to declare upon the antient limitation.

Becauſe the yeere is paſt by the protection pending.

A man brings a Precipe upon a falſe limitation before aſcenſion, &c. which abates after aſcenſion, &c. by death of the tenant, And the demandant brings another Precipe, halfe a yeere within the yeere, the tenant is eſſoyned *de ſervitio Rs.* which is admitted, and after the expiration of that, the Demandant comes to declare, he ſhall not have advantage to declare the antient limitation.

Becauſe the yeere is expired.

Two Parceners brought a writ of Aile before aſcenſion, &c. upon the antient limitation, and one had iſſue, and dieth after aſcenſion, &c. and the other, and the iſſue brings a writ of Ayle within the yeere, &c. they ſhall not have advantage for to declare upon the antient limitation.

Becauſe the anceſter was grandfather to one, and great grandfather to the other, and therefore could not joyne, and they ſhall not be ayded by

by the equality of the ſtatute, as in Mordaunceſtor.

A man brings a Precipe upon the antient limitation, before aſcenſion, &c. which abates by the death of the tenant after aſcenſion, and the Demandant brings another writ within the yeer, and the tenant voucheth an infant within age of 19. yeeres, by which the plea demurs, and at full age the Demandant brought a Reſummons againſt the Vouch, the demandant ſhall not have advantage to declare againſt him, upon the antient limitation.

Becauſe the yeere is expired.

A man brought a Precipe upon the antient limitation, before aſcenſion, &c. againſt two tenants for life, which abated after the aſcenſion, &c. by the death of one of the Tenants, the Demandant brings another writ within the yeer, the tenant is eſſoined, and after had the view, and after the Demand, declares, the Ten. praieth in ayde of him in the reverſion, and had the ayde, by reaſon whereof ſummons *ad auxiliand.* iſſueth, and the Prie is eſſoined, ſo that the yeer is now paſt, and now the Prie joyneth, now the demandant

mandant ſhall have advantage to make his Declaration upon the antient limitation.

Becauſe this is a new Declaration, as againſt vouch and tenant by receipt, but the Prie ſhall have oyer of the antient declaration: *nota differentiam.*

A Precipe by him which was beyond ſea, *tempore ſtatuti*, &c. upon the antient limitation, brought within the ſixe yeers, the tenant voucheth an infant of the age of 15. yeeres, by which the Parol demurres untill his age, and after the vouchee upon a Reſummons enters into the warranty, the demandant ſhall not have advantage to declare upon the antient limitation.

Becauſe the 6. yeers are paſt.

A Precipe brought by one within yeeres, *tempore ſtatuti*, upon the antient limitation, and they are at iſſue, and at the *habeas corpora*, or *diſtringas juratores*, the Demandant is eſſoined within the yeer, the Demandant ſhall have advantage to have the eſſoyne. *Fitz. tit. eſſoin.* 20 E. 3.

Becauſe none can reſtraine him to delay

delay himſelf: A man brought a *precipe* againſt two Joynt-tenants upon the ancient limitation before Aſcention, &c. which have the view; and after Aſcention the Writ is abated by the death of one of them; the Demandant brings another *Precipe* againſt the other within the year, and he demands the view again, the Demandant ſhall have advantage, to ouſt him of the view, but contrary is it where the Demandant is non-ſuited, or diſcontinueth, and brings another Writ. 12. *E.* 3.

A Precipe *quod reddat* upon the ancient limitation againſt *J. N.* and *W. S.* before Aſcenſion, &c. and the Writ abates after Aſcenſion, by the death of *W. S.* the Demandant brings another *Precipe* within the year, &c. againſt *J. N.* who ſaid; that the land was given to his father, and to him, and to the ſaid *W. S.* which is dead, and to the Heirs of his Father who died; *J. N.* his Heir within age, and praies his age; the Demandant demurrs upon this matter, he ſhall have advantage to ouſt the Tenant of his age.

Becauſe the poſſeſſion is by purchaſe

notwithſtanding that the Fee be deſcended, 30. *E.*3.

A *Precipe* brought within the year upon this branch of the Statute, the Tenant voucheth within the year, the Demandant ſayeth that the Tenant is outlawed, he ſhall have advantage by this matter to ouſt him of the voucher, 25. *E.*3. and the ſame Law is it, that the vouchee is dead.

Becauſe that voucher is in lieu of an action, and a man out-lawed ſhall not have an action.

A *Precipe* brought by one upon this Article of the Statute againſt Tenant for life within a year, which made default after default, and he in the reverſion, prayes to be received: the Demandant ſaith that he entred upon the land pending the writ, the demandant ſhall not have advantage to ouſt him of the reſceit 13. *R* 2. And the ſame Law by Thorpe if the Tenant ſurrender, pending the Writ.

A *Precipe* by one within years upon this branch of the Statute, the Tenant vouches Proceſs continueth untill the ſequat. &c. The Demandant recovers againſt

againſt the tenant, and after brings a new *Precipe* againſt the ſame Tenant; within the year, the Tenant vouches the ſame Vouchee again; the Demandant, nor the Vouchee ſhall not have advantage to ouſt him of the Voucher 10. *E.* 3.

For the 1. ſeiſin continueth, becauſe he took not execution, and therefore the firſt warranty remains untill execution.

A *Precipe* by one upon this Article of the Statute within a year, &c. againſt two, one makes default after default, the other takes the entire tenancy, and praies the view, the Demandant demurs, he ſhall have advantage to ouſt him of the view.

Becauſe by the taking of the tenancy he had taken notice, &c. And the Statute is, where a writ abates by non-tenure, miſnaming of the village, &c. *Quod in modo brevi non erit viſus concedendus: Et quod concedatur viſus, ubi viſus eſt neceſſarius, &c.*

A *Precipe* by him which was imprisoned *tempore Statuti*, within six years, &c. Upon the ancient limitation, the Tenant vouches half a yeare before the end of the six years; the Vouchee casts a protection, and after the year of that the Demandant sues a Resummons, the Vouchee comes and enters, the Demandant shall not have advantage to declare upon the ancient limitation.

Because the six years are past by the depending of the protection.

The

The twelfth Lecture.

Vpon what Verdicts given upon actions upon this limitation; Attaint ſhall lie, & e contra : *and who ſhall have that, and upon what cauſe,* & e contra.

A Man recovers by Aſſiſe upon this limitation, and after is ouſted by the defendant, and brings a Rediſſeiſin : and the Jury findes for the defendant by falſe verdict, the plaintife ſhall not have an Attaint.

Becauſe it is in a manner but an Enqueſt of Office.

A man leaſeth for 23. yeares after Aſ-

cention, &c. and after ouſts the termor, and enfeoffeth *I. N.* who continueth ſeiſed untill the feoffor ouſted him; the feoffee brings an Aſſiſe upon this limitation againſt the feoffor & the termor, and both plead *Nul tort*: and the Jury finds that the feoffor diſſeiſed the plaintife, and acquits the termor: the plaintife recovers, the termor ſhall loſe his terme, and ſhall not have an Attaint.

Becauſe the pleading is a concluſion againſt him, to have the terme, and the Jury found nothing againſt him.

A man enfeoffed another upon condition without deed, and after enters for the condition broken after Aſcention, &c. the feoffee brought an Aſſiſe, which is taken upon the point of the Aſſeiſe, the Jury found the ſeiſin and diſſeiſin, by which the feoffee recovers, the feoffor ſhall not have an Attaint.

Becauſe they were not bound to finde the condition where it was not pleaded.

A man brought an Aſsiſe againſt two 32 years before Aſcention, &c. One pleads *Nul tort*, which is found againſt him

him to the dammage of 10. li. which is excesive; and the other pleads a forrein Releaſe, he ſhall have an Attaint of the firſt verdict, to which he was not party.

Becauſe he is privy to the originall, and charged with the dammages 39 *H.* 6. 1. for the firſt Iury ſhall tax dammages.

A Mordaunceſter upon this limitation, the Jury findes for the demandant 20 d. dammages, where the dammages are 20 li. the demandant ſhall not have an Attaint. And if in treſpaſs they finde dammages 10 li. which is not but 10. d. the def. ſhall have an Attaint; but if they finde 10.s. dammages, where the dammage is 10.li. the plaintife ſhall not have an Attaint; *quod nota differentiam*, between the Plaintife and Defendant.

Becauſe that he which ſhall render the dammages, if they are exceſſive, ſhall have an Attaint; but contrary of him which reſtraineth the dammages, and they are too little. And *nota* that the ſtatute Articulo. 11. ſaith, that a man ſhall have an Attaint, and ſhall

have Judgement and Execution as heretofore, &c. which copulative refers, that he ſhall have it after the 30 years, or after 40 years. And by the words Aſcention, &c. nothing to the contrary, &c. becauſe nothing is ſpoken to the contrary, but only the limitation of time, &c.

A man recovers in an Aſſciſe upon the ancient limitation, and had dammages 10.li. which are exceſsive; the plaintife releaſes his dammages, and hath judgement, and recovers, the defendant ſhall not have an Attaint of the dammages.

Becauſe he is not grieved 12.E.4.5.

A Mannor with a villain regardant is given to two, and to the heire of one, and the villain is found frank againſt them by an action tryed falſly; he which had the fee dieth, and after the other dies, the heir of him which had the fee ſhall not have an Attaint.

Becauſe it was once ſurvived to the other joynt tenant which cannot diſcend to the heir of the other after,

after, 13 *E.* 4. 2. becanſe an eſtranger in blood.

An Aſſeiſe upon the new limitation; the defendant joynt tenant by deed with a ſtranger which comes and joyneth, and maintaines the joynt-tenancy which is found againſt them by falſe verdict the defendant dieth; the other which joyned and which was party to the iſſue ſhall not have an Attaint;

Becauſe he is a ſtranger to the originall, but he may have an Aſſiſe.

A Writ of Entry in the nature of an Aſſiſe upon the new limitation, againſt two which plead the generall iſſue; the Jury finde that one made the diſſeiſin *ad damnum* 20 li. and acquit the other; whereas in verity none of them made any diſſeiſin: he which is found diſſeiſor dieth, the other ſhall not have an Attaint, and yet the verdict is falſe.

Becauſe he is acquitted, and ſo not grieved, *tit.* brief *Fitz.* 287.

A man had iſſue a ſon & his wife dies, he taketh another wife, and land is given to him, and to the heirs of his body upon his ſecond wife engendered

ed by whom he had iſſue another ſon. & leeſeth by falſe verdict after Aſcent, *&c.* and dieth, the heir to the Entayl, ſhall not have an attaint.

Becauſe that diſcends to the eldeſt ſon, and no miſchiefe, becauſe the youngeſt ſon may falſifie, the recovery 21 *H.* 6. 31.

In a *precipe* the tenant voucheth; the vonchee enters and voucheth over one which enters & leeſeth by falſe verdict; the demandant had judgement and enters; no execution in value is made over againſt the vouchee, and after the vouchee brings an Attaint fourty years after, it lyeth well.

Becauſe foraſmuch as judgement and execution is had againſt the tenant, he may have in value at his pleaſure, and yet if no execution had been againſt the tenant, no Attaint ſhall lye. And yet it ſeemeth that by the judgement without the execution in an action perſonall, Attaint lyeth contrary; in an action reall *Fitz. tit.* Attaint 41 *N.* 77.

In

In a Ceſſavit upon this new limitation brought by the Biſhop of *L.* the tenant pleads overt to his diſtreſs, the Jury is charged therewith, and with the colluſion, and the overture found againſt the tenant which is true, and as to the colluſions that he had ceaſed by colluſion, which is falſe: the demandant had judgement and enters, the Lord *Parramont* enters upon him for the Mortmayn; the demandant ſhall not have an Attaint of the colluſion.

Becauſe that the enquiry of the colluſion was but of office, and alſo it ſeemeth that the judgement is erroneous by reaſon of the colluſion, *&c.* and therefore may have errour, *tamen videtur* that notwithſtanding, that the judgement be erroneous; yet if the verdict be falſe attaint lyeth, becauſe the other cannot compell the party to bring a Writ of errour 18. *E.* 4. 9. but it ſeemeth otherwiſe if the Court be deceived in judgement.

A Mordanceſter upon the new limitation,

tation, the tenant ſaid, that he himſelf is Heir to the Anceſtor, and not the Demandant, and ſo at iſſue. And upon that the Tenant gives in evidence to the Iury, that he was Heir by the ſecond wife of the ſame Anceſtor, becauſe that the firſt wife by which the demandant is Heir, was divorced, the Iury found the demandant, heir notwithſtanding the divorce, the Tenant ſhall not have an Attaint.

Becauſe they are not bound to finde the divorce, for it is a ſpirituall Record.

Certain

Certain Obſervations out of Law-Books in Print upon this Statute.

THE firſt four branches of the Statute uſe the word (ſeiſin) indefinitely, and therefore if the Statute had not gone farther, the word (ſeiſin) ſhould have been conſtrued, *Secundum ſubjectam materiam: viz.* ſometimes for actual ſeiſin, and ſometimes for ſeiſin in Law. Cook l. 4. Bevils caſe f. 8. &c.

And therefore as to a writ of right mordanceſtor Ayle, Aſsiſe, &c. it ſhall be intended of an actuall ſeiſin, and not of a ſeiſin in Law, ſo that the three firſt

first branches are to be intended of an actuall seisin.

And the fourth branch concerning Avowries extends to seisins in law as well as to seisins in fayt or actual seisins.

But the words upon which farther doubt may arise are contained in the 6. branch of the said Statute in these words, *viz.* If any person or persons do at any time sue any of the said actions, &c. or make any avowry, &c. and cannot prove that some of his ancestors or predecessors were in actuall possesion or seison of the said lands, tenements, &c. within the time limited, &c. if that be traversed or denied by the plantiffe demandant, &c. that after such triall, the party and his heirs shall be barred to all such Writs, actions, &c.

Object. Upon which said words it was objected; that whereas at the Common Law before this Statute, a seisin in Law was sufficient for avowries, yet now by the expres words there must be an actual seisin, for that the words (actual possession or seisin) excludes a seisin in law; and the rather for that an

an actuall ſeiſin is the ſure badge of right.

But it was reſolved that a ſeiſin in law was ſufficient for an avowry within the intention of this Act: For the intention of the Act was only to limit a time within which, ſeiſin ought to be had, and not to exclude any ſeiſin which was a good ſeiſin at the Common Law, as appeareth by the preamble of the Statute: neither did the former Statutes of limitations of *Weſtminſter* 1. cap. 38. or of *W.* 2. cap. 2 & 46. exclude a ſeiſin in Law, or any ſeiſin which was a ſufficient ſeiſin at the common Law. Alſo whereas the three firſt branches extend to actuall ſeiſin only; and the 4. branch extends as well to a ſeiſin law as to an actuall ſeiſin: And the ſixth Article ſpeaks by words diſ-junctive of actuall poſſeſsion or ſeiſin) makes a diſtinction betwixt actuall poſſeſsion, which referres to the three firſt branches, and ſeiſin which referreth to the fourth branch, for that the words ſubſequent are (in manner, and forme aforeſaid.

It was alſo reſolved that this Statute doth

doth not extend to ſuch rent or ſervice which by common poſſibility cannot happen or become due within 60 years.

As a ſigniory conſiſting upon homage and fealty only; for that the tenant may live above 60 years after that they were made: and ſo of caſuall ſervices, as to go to war with the Lord, and the like of a Formedon in diſcender, for that the tenant in taile may live 60 years after diſcontinuance, and albeit that the tenant in taile do dye, ſo that the iſſue may bring his Formedon within the time &c. yet that altreth not the caſe, but that the iſſue may bring his Formedon in diſcender at any time, as it was adjudged in *Fitz Williams* caſe, *Dy.* 278, and the ſame law is of homage and fealty and all other accidentall ſervices; or where there was an impoſſibility to have ſeiſin within the limitation. And in this caſe of *Bevill* it was agreed f. 11. *a.* that a Writ Eſolvert, Ceſſavit or Reſcous are not within this ſtatute, for that in thoſe Writs the ſeiſin as not traverſable but the tenure; and by thoſe VVrits the

land

land is demanded, and the demandant cannot alleadge any ſeiſin &c. for he commeth to them in the poſt. And the ſtatute extendeth only to ſuch writs where a ſeiſin may be alleadged, and 21 *H.* 6. 22. that ſeiſin ſhall not be alleadged in thoſe writs; for that the land is demanded by reaſon of the ſigniory, and not by reaſon of ſeiſin of the land: and accordingly it is reſolved, *Dy.* 11. *Eliz.* 278.

If a man had been out of poſſeſſion of land by 60 years, yet if his entry be not taken away, he may enter and bring any action of his own poſſeſſion, becauſe the firſt clauſe doth not barr any right; but prohibits that no perſon ſhall ſue or maintain any writ of right or make any preſcription &c, of the poſſeſſion of his anceſtor or predeceſſor, but only of the ſeiſin of ſome of his anceſtors within 60 years, which doth not inhibit, but that if his entry be lawfull, and he doth enter, he may have an action of his own poſſeſſion. *Sol.* 3.

And note that the 1. & 2. clauſes of the ſtatute extend only to ſeiſin, Anceſtrall,

ſtrall, and not to a writ of right of his own ſeiſin. And the third branch extends only to actions of his own poſſeſſion, and not to entries. The fourth to Avowries, *&c.*

And foraſmuch as the ſervices of homage & fealty are not within this ſtatute, and that the ſeiſin of rent, or other annuall ſervice is a ſeiſin of homage, and that likewiſe a ſeiſin of homage or fealty is a ſeiſin of all ſervices annuall, or not annuall: that therefoee when the tenant hath done homage or fealty that ſhall be a ſeiſin of all other ſervices: as to Avowrie which of right ought to be made, notwithſtanding that the Lord or any by whom he claimeth have had ſeiſin within 60 years. *Co. l.* 4 *Bevils* caſe.

Nota by the opinion of the Court, that in a writ of Formedon in the reverter or remainder or a *ſcire facias* upon a fine of the like nature, the demandant need not alleadge in his writ, or declaration, any limitation by this ſtatute, till within 50 years after title: becauſe that before this ſtatute no limitation was mentioned in ſuch writs, nor in a

Formedon

Formedon in the diſcēder, but that is to come on the part of the tenant by traverſe as in an avowry not ſeiſed of the ſervices within the limitation *Dy. f.* 315.

In a replevin the defendant avowed for a rent charge reſerved by deed upon a feoffment, *viz.* for the arrerages for 20 years; the defendant pleaded in bar, that *neq;* the plaintife nor his anceſtors, *nec aliqui alii quorum ſtatum*, the plaintife, *habuit in redditu predicto*, were ſeiſed of the ſaid Rent within 40. years paſt: *ante predictum tempus quo &c.* upon which the avowant demurred. And it was reſolved that the ſaid ſtatute of 32. *H.* 8. of limitations, extendeth only to ſuch caſes where a ſeiſin ought to have been alleadged before the ſtatute, and that was where ſeiſin was ſo materiall that it ſhould not be avoyded: albeit the ſeiſin were gained by inchroachment, as of a rent betwixt Lord and tenant. And not in caſe of a Rent by reſervation or graunt, for there the deed is the title, and no incroachment will hurt in that caſe and herewith accordeth *Plo. f.* 94. in *Woodlands*

lands case. And the avowant in his avowryneed not alleage seisin within 40 years, but that shall come on the other part, *Cook l.* 8. *f.* 64. Sir *William Fosters* case.

The said statute of 32 doth not extend to copy-holders as to avowry or demanding of services, because the stat. is to be intended of free-holds only betwixt very Lord and very tenant.

It was resolved in the Lord *Comptons* case 10 & 11 *Eliz. Rot.* 583. that a Formedon in discender was out of the statute.

It seemeth that the said statute of limitations is not only for to limit the time of writs, but to cut off and extinguish the right, for that *Stamf. prerog. Reg.* 42. citeth *Bracton* & *Britton*, which say that if the King had right to any lands, and had surceased his time so long that it exceeded the time of limitation, in a writ of right his highness had thereby lost his right for ever.

The prescription which a copy-holder is not in himself, or of the seisin of his ancestors but in the Lord and so out of

of the words of the ſtatute; and the like law is of a preſcription by the inhabitants of a town.

The lord doth neither ſeiſe nor claim his villain, nor his iſſues within 100 years; ſo that a *nativo habendo* doth not lie againſt the iſſue of the villain, becauſe of the ſaid *Stat.* of 32 of limitations: whether may the lord ſeiſe or not? And it ſeemeth that he cannot, becauſe it is in *favorem libertatis.*

The ſeiſin of the donee was never traverſable, nor intended to be within the ancient ſtatutes of limitations: for the Formedon was given after the making of the ſtatute of *Weſtminſter* the firſt 10 years, but *Welſh* doubted hereof, *Dy. f.* 278. *S.* 2. 3.

Cook in his Comment upon *Littleton f.* 114. *b.* ſaith that limitation as it is taken in law, is a certain time preſcribed by ſtatute; within the which the demandant in the action muſt prove himſelf or ſome of his anceſtors ſeiſed. And that in ancient time, the limitation in a writ of right was from the time of *H.* 1. and was therefore alleaged to

be *tempore H. ſenioris.* Afterwards by the Statute of *Merton*, the limitation was from the time of *Henry* the ſecond, and by the ſtatute of *Weſtminſter* 1. the limitation was from the time of *R.* 1. which is the limitation that *Littleton* ſpeaketh of in his Booke of Tenures. And from the ſtatute of 32. *H.*8. aforeſaid, doth not extend to a Formedon in diſcender, nor to the ſervices of Eſcuage, Homage, & Fealty, nor to any other ſervice, which by common poſſibility may not be due within 60 years, as to cover the Lords Hall; nor where the ſeiſin is not traverſable or iſſuable; nor any rent created by deed, or reſerved upon a particular Eſtate; nor to any writ of right, of advowſon, *quare imp.* or Aſſiſe of darrain preſentment; or any writ of right, of ward, or raviſhment of ward, *&c.* but they are left as they were before the ſaid ſtat. of 32.

FINIS.